TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 550.

JOHN L. SHUMATE, PLAINTIFF IN ERROR,

vs.

AUGUST HEMAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED JANUARY 28, 1901.

(18,035.)

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1 UNITED STATES OF AMERICA, *88:*

The President of the United States to the honorable the judge of the supreme court of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the April term, 1900, thereof, between August Heman, respondent, and John L. Shumate, appellant, a manifest error hath happened, to the great damage of the said John L. Shumate, appellant, as aforesaid, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., not exceeding thirty days from and after the day the citation in this cause bears date, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 21st day of November, in the year of our Lord one thousand nine hundred.

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, central division, dated as aforesaid.

{ Seal of the United States Circuit Court for the Western District of Missouri, Central Division. }

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri, Central Division.

Allowed by—
JAS. B. GANTT,
Chief Justice, Supreme Court of Missouri.

[Endorsed:] No. —. United States circuit court, western district of Missouri. August Heman, resp't, *vs.* John L. Shumate, app't. Writ of error to the supreme court of the State of Missouri. Filed Nov. 28, 1900. Jno. R. Green, clerk.

Return to Writ.

UNITED STATES OF AMERICA, *State of Missouri,* } *88:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified tran-

script of the record and proceedings in the within-entitled case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said supreme court of the State of Missouri, at the city of Jefferson, this 4th day of December, A. D. 1900.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN, *Clerk.*

2 The United States of America to August Heman, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, D. C., not exceeding thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the supreme court of Missouri, wherein John L. Shumate is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James B. Gantt, chief justice of the supreme court of Missouri, this 28th day of November, in the year of our Lord one thousand nine hundred.

JAMES B. GANTT,
Chief Justice.

[Endorsed:] Supreme court of Missouri. August Heman, resp't, *vs.* John L. Shumate, app't. Citation. Filed Nov. 28, 1900. Jno. R. Green, clerk.

UNITED STATES OF AMERICA,
Central Division of the Western District of Missouri, } *ss:*

I hereby acknowledge due service of the within citation this 1st day of December, A. D. 1900.

HICKMAN P. RODGERS,
Attorney for Defendant in Error.

3 In the Supreme Court of Missouri, Court in Banc, October Term, 1900.

STATE OF MISSOURI, *set:*

Be it remembered that heretofore, to wit, on the 26th day of March, 1900, there was filed in the office of the clerk of the supreme court of the State of Missouri a certified copy of the judgment of the circuit court of the city of St. Louis and an order granting an appeal in a certain cause wherein August Heman was respondent and John L. Shumate was appellant; which said certified copy of judgment and order granting an appeal is in words and figures as follows, to wit:

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that heretofore, to wit, at the June term, A. D. 1899, of the circuit court, city of St. Louis, within and for the city and State aforesaid, and on the twelfth day of June, 1899, it being the seventh day of the said June term, 1899, of said circuit court, the following proceedings were had in cause No. 84205 of said court, wherein August Heman is plaintiff and John L. Shumate is defendant, to wit:

AUGUST HEMAN }
vs. } (84205.)
JOHN L. SHUMATE. }

MONDAY, *July 12th*, 1899.

Now, at this day, this cause coming on for hearing, come the parties hereto, by their respective attorneys, and, waiving a jury, submit this cause to the court upon the evidence and proof adduced; and the court, having heard and duly considered the same and being fully advised in the premises, doth find the issues herein joined in favor of the plaintiff, and that the defendant is indebted to the plaintiff in the sum of two hundred and twenty-two and $\frac{17}{100}$ dollars (8222.17) on account of the special-tax bill on which this
4 action is founded.

It is therefore ordered and adjudged and decreed by the court that the following-described property of the defendant, to wit, lot No. 8, in block 3661, of said city of St. Louis, said lot having a front of 50 feet by a depth of 134.67 feet and being bounded on the north by Donohoe, east by Belleglade avenue, south by Puthoff, and west by alley, is subject to the payment of said tax bill, being No. 8689, for work done on Vandeventer Avenue sewer district No. 1, under authority of the city charter and of ordinance- numbered 13076, 13482, 13596, 14625, and 14630 of said city and under contract 1454, and that the said debt so found to be due, being the amount of said tax bill, with accrued interest from the date of commencement of this suit to this date, being the total sum of two hundred and twenty-two and $\frac{17}{100}$ dollars, together with the costs of this suit, is a special and first lien against the said property as hereinbefore described, and that the sheriff of the city of St. Louis proceed to sell said property, according to law, to satisfy said debt, interest, and costs, and that special execution issue herein. It is further ordered by the court that the defendants' cross-bill be, and the same is hereby, dismissed.

And afterwards, at the said June term, 1899, of said court, the following further proceedings were had in said cause, to wit:

AUGUST HEMAN
vs.
JOHN L. SHUMATE ET AL. } (84205.)

SATURDAY, *September 30th*, 1899.

On motion of defendant John L. Shumate, by attorneys, it is ordered by the court that he be granted sixty days' time within which to file his bill of exceptions herein. It is further ordered by the court that said defendant be given ten days' time to present and file appeal bond. The said defendant files herein his affidavit for appeal, and on his motion an appeal is allowed him to the supreme court of Missouri from the judgment herein rendered.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I, Henry Troll, clerk of the circuit court, city of St. Louis, in and for the city and State aforesaid, do hereby certify that the above and foregoing is a true, full, and complete transcript of the judgment in the above-entitled cause, and showing the term and day of the term, month, and year in which the same was rendered, and also of the order granting an appeal in the said cause, as fully as the same remain of record in my office.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at office, in the city of St. Louis, this 16th day of December, 1899.

HENRY TROLL,
Clerk Circuit Court, City of St. Louis.

And afterwards, to wit, on the 27th day of March, 1900, the following proceedings were had in said cause, viz:

AUG. HEMAN, Resp., }
vs.
JNO. L. SHUMATE, App. }

Now, at this day, it is ordered by the court that these causes be advanced and set for hearing in banc at the April term, 1900.

And afterwards, to wit, on the 27th day of April, 1900, there was filed in the office of the clerk of the supreme court of Missouri a copy of the record in the above-entitled cause; which said copy of the record is in words and figures as follows, viz:

6 In the Supreme Court of Missouri, in Banc, April Term, 1900.

AUGUST HEMAN, Respondent,)
vs.) No. —.
JOHN L. SHUMATE, Appellant.)

Record.

On December 31, 1890, there was filed in the office of the clerk of the circuit court of the city of St. Louis a petition in words and figures as follows, to wit:

STATE OF MISSOURI,)
City of St. Louis,) *ss:*

In the Circuit Court, City of St. Louis, Mo., February Term, A. D. 1891.

AUGUST HEMAN, Plaintiff,)
vs.)
JOHN L. SHUMATE, HUNTINGTON SMITH, Defendants.)

Plaintiff states that the defendants are the owners in fee-simple of a lot of ground lying and being situate in the city of St. Louis and State of Missouri, and more particularly described as follows: Lot No. 8, in block 3661, of said city of St. Louis, said lot having a front of fifty feet by a depth of 134.67 feet, and being bounded on the north by Donohoe, east by Belleglade avenue, south by Putthoff and west by alley.

That the municipal assembly of the city of St. Louis, State of Missouri, by ordinances numbered 13076, 13482 and 14625, provided for the creation of Vandeventer Avenue sewer district number 1, in said city as follows: (Said ordinances were not inserted.)

That by ordinance numbered 13596 and 14630, said municipal assembly provided for the construction of sewers in said Vandeventer sewer district as follows: (Said ordinances were not inserted.)

That by and under said ordinances numbered 13076, 13482 and 14625, said Vandeventer Avenue sewer district number 1 was created, and at the times hereinafter mentioned existed, and that the real estate above described was in said Vandeventer Avenue sewer district number 1.

7 That the municipal assembly of the city of St. Louis, Missouri, by said ordinances numbered 13596 and 14630, duly enacted, caused to be constructed and authorized and directed the board of public improvements of the city of St. Louis, to cause district sewers to be constructed within Vandeventer Avenue sewer district number 1, with all the lateral sewers, inlets, man-holes, flush-tanks, junction pieces and other appurtenances necessary to render said sewers complete and efficient, and said sewers to be made and located as described in said ordinances.

That after said ordinances went into effect, the work therein directed to be done was duly advertised, let out and awarded to the plaintiff, who was the lowest bidder therefor, and plaintiff thereafter

duly entered into a contract with the city of St. Louis for the performance of said work, which contract was numbered 1454, and delivered to the city of St. Louis a bond for the faithful performance of said work executed by himself and two good and sufficient sureties, which contract and bond were certified to be in due form and according to law by the city counselor, and were duly approved by the mayor and municipal assembly of said city of St. Louis.

That thereafter plaintiff entered upon the performance of the work directed to be done by said ordinances numbered 13596 and 14650, and duly completed the same, in accordance with law and said ordinances and contract; and the same was duly accepted by the city of St. Louis; that thereafter the president of the board of public improvements computed the costs thereof and levied and assessed the same as a special tax against each lot of ground chargeable therewith, and among others the lot of ground hereinbefore—in the names of the owners thereof respectively, in the proportion

8 that the square feet of each lot in said sewer district bore to the total number of square feet in said sewer district, being all the property chargeable with the special tax aforesaid, and made out and certified to the comptroller on behalf of the contractor bills of such cost and assessment accordingly, and that plaintiff's receipt was taken by the comptroller therefor, and said bills delivered to him.

Plaintiff states that the lot above described was one of the lots in said Vandeventer Avenue sewer district number one, and that it was duly assessed by the president of the board of public improvements, in the proportion aforesaid, with the sum of $98.07 ninety-eight $\frac{7}{100}$ dollars that said president made out a bill of said assessment in the names of the owners of said lot and registered the same in his office, and certified and delivered the same to the comptroller, and took his receipt therefor, and said comptroller countersigned and delivered the same to this plaintiff, in whose favor it was issued; that said bill was dated January 8, 1889, was numbered 8689, and is herewith filed and marked Exhibit "A."

Plaintiff states that he demanded payment of said bill of the owner of said lot prior to the beginning of this suit, to wit: on the 1st day of February, 1889, which was refused.

Wherefore, plaintiff prays judgment for the amount of said bill with interest from February 1, 1889, at the rate of fifteen (15) per centum per annum, and that the same be adjudged a lien on the lot of ground above described, and that said lot be sold to pay the amount of said bill, interest and costs.

T. J. ROWE,
Attorney for Plaintiff.

And at the same time there was also filed the special-tax bill mentioned in said petition and marked "Exhibit A;" which said tax bill is in words and figures as follows, to wit:

Special-tax Bill.

Office of president of board of public improvements.

ST. LOUIS, *January* 8, 1889.

No. 8689. John L. Shumate, owner, to August Heman, contractor, Dr.

For constructing sewers in Vandeventer Ave. sewer district No. 1, under authority of ordinances Nos. 14625, 14630, 13076, 13482, and 13596, and under contract No. 1454.

Boundaries.				Description.				Area square feet in district.	Total cost of sewer.		Rate per 100 square feet.		Area square feet in lot.	Amount.	
North.	East.	South.	West.	No. of block.	No. of lot.	Frontage.	Depth.		Dolls.	Cts.	Dolls.	Cts.		Dolls.	Cts.
Donohoe.	Bellegd. Ave.	Pothoff.	Alley.	3661	8	50.0	134.67	16,706,365	$243,336	09	$1	45655	6,733	$98	07

I hereby certify, that as shown by the certificate of the sewer commissioner, on file in this office, the above-mentioned work was done and material furnished by the above-mentioned contractor. I further certify that the board of public improvements has assessed the cost of the sewers in said district upon the property-owners thereof, according to law; that the rates, or prices and amount, viz., $98.08, are correct, and that the person herein named as the owner of the land, and charged with the bill, is liable to pay the same.

HENRY FLAD,
President of the Board of Public Improvem'ts.

Registered and countersigned:
R. A. CAMPBELL, *Comptroller.*

JOHN L. SHUMATE VS. AUGUST HEMAN.

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10 And thereafter, on June 6, 1899, the defendants, by leave of court, filed the following amended answer and cross-bill:

In the Circuit Court, City of St. Louis, State of Missouri.

AUGUST HEMAN, Plaintiff,
vs.
JOHN L. SHUMATE ET AL., Defendants. } No. 84205.

And now come the defendants, John L. Shumate and Huntington Smith, and for answer to plaintiff's petition state as follows, to wit:

Defendants deny each and every allegation in said petition contained, and pray hence to be discharged with their costs.

And for further answer and, by way of a cross-bill to said petition, defendants state and aver that the greater part of the work alleged in the petition, to have been done by plaintiff, and upon which, and for which, said alleged special-tax bill is alleged to have been issued, if done by plaintiff, was done upon the large sewer constructed in an alleged sewer district known as Vandeventer Avenue sewer district number one, and extending from the point of its connection with Mill Creek sewer, a distance of two miles to a point near the Fair grounds in the city of St. Louis.

That said sewer, so constructed in said Vandeventer avenue, was and is of very large dimensions, and was and is a public sewer, within the meaning of section- 20 and 21, article VI, of the scheme and charter of the city of St. Louis, and was and is constructed in a public street, and along a principal natural course of drainage; that said sewer is, as defendants are informed and believe and aver, nowhere constructed in or upon private property.

11 That said Vandeventer Avenue sewer was and is of the mean diameter of eight (8) feet — (6) inches, at its intersection with said Mill Creek sewer, and was intended to be, and is a branch of said Mill Creek sewer, which itself is a public sewer within the meaning of the scheme and charter aforesaid. That said Vandeventer Avenue sewer is of greater capacity than necessary to drain the district proper, in which it is constructed, and was constructed of this great diameter and length for the purpose of receiving and carrying into Mill Creek sewer, by means of private and district sewers, connected with it, not only the sewage and drainage of the district proper in which it is constructed, but also the sewage and drainage of other districts adjacent to it; and the sewage and drainage of not one district only, but of many districts.

The plan and scheme of said Vandeventer Avenue sewer district number 1, so projected by the ordinance creating the same, embraced said main construction of smaller lateral sewers, connecting with the Vandeventer Avenue sewer, in and for the purpose of draining several local subdistricts bordering on said main Vandeventer Avenue sewer by means of district sewers, and said lateral sewers were constructed and connected with and drained into said main sewer; and the cost of constructing said lateral district sewers was not kept separate and assessed against the property in said subdistricts, but was all lumped together and assessed against all the

property, in general, embraced in the general district created by said ordinance as Vandeventer Avenue sewer district number 1, so that the property in one subdistrict was assessed in addition to the cost of the said main sewer with the cost of district sewers in other districts.

12 Defendants aver that said Vandeventer Avenue sewer was not and is not a district sewer, within the meaning of the provisions of the scheme and charter aforesaid. That said Vandeventer Avenue sewer is larger and longer than any district sewer ever heretofore constructed in the city of St. Louis.

While the city council, upon the recommendation of the board of public improvements, had authority to create sewer districts, for the construction of district sewers, it had, and has, no power or authority to create a sewer district for the construction of district sewers, and thereafter to construct or authorize the construction therein of a public sewer, at the expense of the holders of the property, in such district, and has no power or authority to assess the cost of the construction of such sewer against such private property.

Defendants aver that the cost of the construction of said Vandeventer Avenue sewer must and should be paid out of the public revenue, and defendants further aver that the said tax bill sued on herein is, for the above reasons, null and void, and constituted no cause of action against these defendants.

And the defendants further aver that the construction of said Vandeventer Avenue sewer was not authorized either by city ordinance No. 13598, nor by city ordinance No. 14630, as alleged and charged in plaintiff's petition, and defendants further aver that said ordinance No. 14630 is not complete in itself, nor does it, in itself, authorize the construction of the Vandeventer Avenue sewer, nor of the lateral brick sewers referred to in sections 1, 2 and 3 of ordinance No. 13596. That before any work was done on any of said sewers under ordinance No. 13596, the district to which that ordinance was to apply was abolished by the passage of ordinance No. 14625 which was approved on the 17th day of July, 1888, so that before the passage of ordinance No. 14630, the sewer district under which

13 sewers were authorized to be constructed under sections 1, 2 and 3 of ordinance No. 13596 had been abolished and was out of existence, and there was no sewer district then in existence to which the said sections 1, 2 and 3 of ordinance No. 13596 could be applied. And thereupon these defendants aver that the construction of said Vandeventer Avenue sewer and the lateral sewers running into it, referred to in sections 1, 2 and 3 of ordinance No. 13596, were not authorized by either the city council or the board of public improvements. And defendants further state that said ordinance No. 14630, not being complete in itself, is null and void, and that any and all special-tax bills issued thereunder, including the tax bill herein sued upon, are null and void.

Defendants further aver that none of the said ordinances mentioned and referred to in plaintiff's petition were recommended or approved by the board of public improvements as required by the scheme and charter.

And further answering, defendants aver that the lot of ground described in plaintiff's petition was not duly assessed by the board of public improvements in any manner whatsoever with the sum of forty-nine dollars and four cents ($49.04), as alleged in said petition.

That the enforcement and collection of said alleged special-tax bill predicated upon said alleged assessment by the sale of said property claimed to be subject to the same under sections 21, 22, 24 and 25 of article VI of the charter of the city of St. Louis; and the ordinances of the city of St. Louis; numbered 13076, 13482 and 14625; and ordinances of said city numbered 13596 and 14630, which ordinances are set out in plaintiff's petition, would be in fact the confiscation of said property under the claim of exercising the right of taxation, and would be depriving defendants of their said property without due process of law, and would be taking the said property of defendants for public
14 uses, without just compensation, contrary to the provisions of the fourteenth amendment of the Constitution of the United States, and contrary to the provisions of sections 20 and 21 of article II of the constitution of the State of Missouri, and for that reason said provisions of said charter and said ordinances and said assessment and said tax bill are void; and said provisions of said charter and of said ordinance of said city are repugnant to and in conflict with the said provisions of said constitutions for the further reasons that they do not provide for limiting the amount of special taxes for the construction of said sewer to the amount of value, or to the benefits received from said construction by defendants' property so taxed; and for the reason that they do not contain any provision requiring the municipal assembly of said city, or any State or municipal agency to find and determine the extent to which the public of the city of St. Louis would be and were benefited by the said alleged improvement; and contain no provision requiring the said municipal assembly or any other municipal or State agency to find and determine that the property embraced in the taxing district created by said ordinance or that defendants' said property would be benefited by said alleged improvement, or to ascertain the extent to which defendants' said property would be or was benefited over and above the benefit derived from the same improvement by the public, or by the city of St. Louis; and for the reason that the said provisions of the said charter and ordinance provides for the assessment of the cost of the construction of said sewer and sewers against the owners of the property in said alleged district, by apportioning the whole cost of such construction and improvement on the front feet of said property, without regard to the fact that the lots of ground so taxed might be and were of unequal depths; and without re-
15 gard to the fact that if the proporty was benefited at all, over and above the benefit derived by the public, some of the same abutting property would receive greater benefits from the said work than other property in the same district.

These defendants allege that the said special-tax bill, No. 8674, is an apparent lien and constitutes a cloud upon defendants' title to defendants' land, described in the said petition and in said tax bill.

Thereupon, these defendants pray that this court will order, adjudge and decree that the said assessment of the proportionate part of the cost of construction of the said sewer against the defendants' said property, and that the said special-tax bill herein sued on, being number 8674, are null and void and of no effect, and constitute no lien upon defendants' said property, and that said special-tax bill be cancelled and delivered up to these defendants.

HIRAM J. GROVER,
Attorney for Defendants.

Whereupon, the plaintiff, on the same day, filed a reply to said amended answer as follows:

Circuit Court, February Term, 1899.

AUG. HEMAN, Plaintiff,
vs.
JOHN L. SHUMATE and HUNTINGTON SMITH, Defendants. } No. 84205.

Plaintiff for reply to the new matter contained in the amended answer of defendant John L. Shumate denies each and every allegation in said new matter contained.

HICKMAN P. RODGERS,
Attorney for Plaintiff.

16 Thereafter, to wit: on the 12th day of June, 1899, the court having duly heard and considered said cases, rendered the following judgment and decree, to wit:

AUGUST HEMAN
vs.
JOHN L. SHUMATE.

Now at this day, this cause coming on for hearing, come the parties hereto, by their respective attorneys, and waiving a jury, submit the cause to the court upon the evidence and proof adduced; and the court having heard and duly considered the same, and being fully advised in the premises, doth find the issues herein joined in favor of the plaintiff, and that the defendant is indebted to the plaintiff in the sum of two hundred and twenty-two and $\frac{7}{100}$ dollars on account of the special-tax bill on which this action is founded. It is, therefore, ordered, adjudged and decreed by the court that the following-described property of the defendant, to wit: lot No. 8, in block 3611 of said city of St. Louis, said lot having a front of 50 feet by a depth of 134.67 feet, and being bounded on the north by Donohoe, east by Belleglade avenue, south by Potthoff and west by alley, is subject to the payment of said tax bill, being No. 8689, for work done on Vandeventer Avenue sewer district number 1, under authority of the city charter and of ordinances numbered 13076, 13482, 13596, 14625 and 14630, of said city, and under contract 1454, and that the said debt so found to be due being the amount of said tax bill with accrued interest from the date of commencement of

this suit to this date, being the total sum of two hundred and twenty-two and $\frac{17}{100}$ dollars, together with the costs of this suit, is a special and first lien against the said property as hereinbefore described, and that the sheriff of the city of St. Louis proceed to sell said property according to law to satisfy said debt and costs, and that special execution issue herein. It is further ordered by the court that defendants' cross-bill be, and the same is hereby dismissed.

And on the 16th day of June, 1899, within four days from the rendition of said judgments, and at the same term of court, defendant filed his motion for new trial and motion in arrest of judgment, which are fully set forth in the bill of exceptions hereinafter.

17 And afterwards, on the 23d day of June, 1899, the court overruled all of said motions, to which action and ruling defendants then and there duly excepted.

And afterwards, to wit, on the 30th day of September, 1899, at the same term of court, to wit, the June term, 1899, the court made and entered of record the following orders, to wit:

AUGUST HEMAN
vs.
JOHN L. SHUMATE.

On motion of defendant, by attorney, 60 days' additional time is granted defendant to file his bill of exceptions herein, and ten days' time to file his appeal bond. And defendant files an affidavit for appeal, and on his motion an appeal is allowed defendant to the supreme court of Missouri from the judgment heretofore rendered herein.

Said affidavit is as follows, to wit:

In the Circuit Court, City of St. Louis, State of Missouri, Room 6.

AUGUST HEMAN, Plaintiff,
vs.
JOHN L. SHUMATE and HUNTINGTON SMITH, Defendants. } No. 84205.

Affidavit for Appeal.

John L. Shumate, one of the defendants in the above-entitled cause, being duly sworn, upon his oath says that the appeal prayed for by him is not made for vexation or delay, but because he considers himself aggrieved by the judgment and decision of the court.

JOHN L. SHUMATE.

Subscribed and sworn to before me this 28th day of September, 1899.

ARTHUR W. REHFELDT,
[SEAL.] *Notary Public, City of St. Louis, Mo.*

My commission expires Dec. 12th, 1900.

Thereafter, to wit: on the 29th day of November, 1899, and within the time limited therefor, defendants presented the following bill of exceptions, which was thereupon signed, sealed and filed.

AUGUST HEMAN, Plaintiff,
vs.
JOHN L. SHUMATE ET AL., Defendants. } No. 84205.

Appearances: H. P. Rogers, Esq., attorney for plaintiff; Messrs. Grover and Grover, attorneys for defendants.

18 Be it remembered, that on this 6th day of June, 1899, the above-entitled cause came on for a hearing before his honor, Franklin Ferris, presiding as judge over division No. 6, of the honorable circuit court, city of St. Louis, when the following proceedings were had, to wit:

Mr. ROGERS: I dismiss this case as to the defendant, Huntington Smith.

Mr. GROVER: Then I ask leave to file this answer for Mr. Shumate. I was employed by Mr. Smith and understood that Mr. Shumate was a necessary party to the suit.

Mr. ROGERS: I object to the filing of the answer at this late date.

Mr. GROVER: I enter my appearance for Mr. Shumate, and not being in the court-room I think he has the right to file his answer.

The court permitted the answer to be filed as amended.

Mr. ROGERS: I suppose it follows that I have a right to amend my reply?

The COURT: Yes, sir; the answer heretofore filed by Smith is now filed against Shumate, and the answer, as amended, to conform therewith.

AUGUST HEMAN, sworn on his own behalf, testified as follows:

Direct examination by Mr. ROGERS:

Q. State your name, please.

A. August Heman.

Q. You reside in the city of St. Louis?

A. Yes, sir.

Q. Are you familiar with the signature of Henry Flad, who was president of the board of public improvements in 1889?

A. Yes, sir.

Q. Are you familiar with the signature of R. A. Campbell,
19 who was comptroller at the same time?

A. Yes, sir.

Q. I will hand you a special tax bill, dated January 8, 1889, naming John L. Shumate as owner, in the sum of $98.08, being Exhibit "A" in this case, and ask you to state if those are the signatures of Mr. Flad and Mr. Campbell, as president of the board of public improvements and comptroller, respectively, as contained in that tax bill.

A. Yes, sir.

Counsel for defendant objected, as incompetent, irrelevant, and immaterial.

The court overruled the objection.

To which action and ruling of the court defendant, by counsel, then and there duly excepted.

Counsel for plaintiff offered in evidence said tax bill, being dated St. Louis, January 8, 1889, John L. Shumate to August Heman, contractor, for constructing sewers in Vandeventer sewer district No. 1, and mentioning lot 8, block No. 3661, having a front of 50 feet by a depth of 134 and $\frac{61}{100}$, the amount being $98.08; and counsel for plaintiff stating that he also offered said tax bill for the purpose of showing the detailed information contained in the tax bill. Said tax bill is in words and figures as follows, to wit:

(For tax bill see page 15, *ante*.)

Cross-examination by Mr. GROVER:

Q. You are the plaintiff in this case?

A. Yes, sir.

Q. In that petition, you set out the ordinances by numbers under which you allege that the contract was made with you by which you did the work in Vandeventer sewer district, No. 1. Have you got that contract with the city?

A. Unless it is amongst the papers there.

By Mr. GROVER: I gave notice to produce this contract when this case was set for trial, but Mr. Rogers said he did not have it. I simply want to show the fact.

By Mr. ROGERS: I told him I did not have it.

(By Mr. GROVER:)

Q. Have you got the contract?

A. No, sir; not with me.

Q. Have you looked for it?

A. No, sir; I have not. I did not know it was wanted.

Q. Didn't you hear me notify you, I wanted that contract here?

A. Not that I know of; I certainly would have brought it if I knew it was wanted.

Q. Your attorney told me he could not find it.

A. He may have asked the office and they could not find it, being ten years old, and being used in several cases.

Q. Will you look for that contract during the recess, at noon?

A. Yes, sir.

Q. And get it here if you can?

A. Yes, sir; I think it is in the court, in some of the cases that have been tried; very likely in the Loevy case, if the papers can be found.

Q. I will ask, Mr. Heman, if the contract, which you say you have not got with you, followed in its terms the ordinances which you set out in your petition?

A. That I could not say.

By Mr. ROGERS: I object unless it is amended by asking the witness, if he knows.

The COURT: If you are going to have the contract here, it seems to me you better have it.

(By Mr. GROVER:)

Q. Now, Mr. Heman, you did the work personally on that sewer?
A. Yes, sir.
Q. You were present while it was being done?
A. Yes, sir.
Q. You made the contract for the work, and you did the work?
A. Yes, sir.
Q. What was the dimensions of that Vandeventer sewer, at the point of its junction with the Mill Creek sewer?

21 By Mr. ROGERS: I object as immaterial; I base my objection on the provision of the charter which states that the board of public improvements shall recommend the district sewers for sanitary purposes, etc., and the character, dimensions and material of such sewers shall be prescribed and may be changed, diminished, enlarged and extended by the board of public improvements. This charter puts within the board of public improvements expressly the power of determining the dimension of a district sewer or any other sewer in the city of St. Louis, and, as that authority is vested in the board of public improvements it would be no defense to this action to show the actual dimension of that sewer.

The COURT: I consider the evidence competent only to show that it was either a public, district or private sewer; the ministerial acts of the board of public improvements are reviewable but the judicial acts are not.

By Mr. ROGERS: I will frame my objection to meet that point. I contend that the board of public improvements in the city of St. Louis is vested with the power of determining the character of a sewer—whether it is a public, district or private sewer.

The COURT: Why don't you demur and settle that question?

By Mr. ROGERS: It can be settled here.

The court overruled the objection.

(Last question repeated, which is as follows:)

Q. "What was the dimension of that Vendeventer sewer at the point of its junction at the Mill Creek sewer?"
A. Either 8 feet or 8 feet and a half; I don't remember.
Q. What was the dimensions of the Mill Creek sewer at the point of junction?
A. 15 by 15 or 20 feet.
Q. Did you build the Mill Creek sewer?
A. Not that part of it.

22 Q. Was the Mill Creek sewer completed up to the point of junction at the time that this work was done by you?
A. Yes, sir.
Q. It had already been finished?
A. Before I completed this work.

Q. That is not the question; before you began the work under these contracts and these ordinances, had the Mill Creek sewer been completed to that point?

A. Not exactly; it was under construction.

Q. Both works were projected to join at that point?

A. Yes, sir.

Q. Now, how far up Vandeventer avenue did this sewer continue to be of the dimensions that you stated it had to be at its junction with the Mill Creek sewer?

Counsel for plaintiff renewed objection.

By Mr. GROVER: The objection may hold to all the questions; I am willing that that may be done—as to the dimensions, lengths and laterals.

By Mr. ROGERS: I object to this inquiry on the ground that defendant's answer and cross-bill do not state facts sufficient to constitute a cause of action. In the first place, the answer is defective because it makes no allegation of a tender; the defendant owning this property in this sewer district, and getting the value of this sewer, would be bound in a court of equity to tender the reasonable value of the improvements to his part of the property before seeking to defeat the tax bill. In the next place, it is sought to bring out evidence to be taken into consideration by this court to determine whether this is a valid tax bill and which has a bearing on the question of whether or not this is a district sewer; and my contention is that it is without the power of this court to go into that question. This court has no jurisdiction for the reason that the charter vests in the board of public improvements the matter of determining the character of a sewer, that is, whether it be a
23 public or a district sewer. I accept the suggestion of the court that, where matters are vested in the municipal authorities not merely ministerial, the courts have no right to inquire into those acts. I say this is not a ministerial act.

The court overruled the objection.

(Last question repeated, which is as follows:)

Q. Now, how far up Vandeventer avenue did this sewer continue to be of the dimensions that you stated it had to be at its junction with the Mill Creek sewer?

A. I cannot say exactly; somewhere between three hundred and five hundred feet.

Q. Now, at the point where it has to be eight or eight and a half feet in diameter, what was the diameter from that point onward?

Counsel for plaintiff objected further on the ground that this is not the best evidence to be had, and as not having laid the proper foundation for secondary evidence.

The COURT: This man was there and saw it and built it and knows it from original knowledge if he knows at all; if he does not know the dimensions and is testifying from profiles or other evidence it is secondary. But if he is testifying from his own knowledge it is original. I overrule the objection.

(By Mr. GROVER:)

Q. Now, at the point where it had to be eight or eight and a half feet in diameter, what was the diameter from that point onward until the diameter was reduced again?

A. As I say, it was reduced every three or five hundred feet six inches at a time until it got to Morgan street and then I think it decreased quicker; I could not say from memory what the size was.

Q. How large was this sewer—the main sewer, I mean—running along Vandeventer avenue and out Morgan street, which you have just referred to?

24 A. I cannot say that from memory. I don't know unless I looked at the map.

Q. You testified about these matters in the case of Heman *vs.* Handlan?

A. Yes, sir; but that has been five or six years ago.

Q. Well, we have your testimony here and you may refresh your memory if you will? (Handing witness said testimony.)

A. The testimony here is just as I have said (reading): "I cannot say." I say that now; I don't know exactly.

Q. As to the point on Morgan street?

A. Yes, sir; I am not positive, but I think it is six feet.

Q. What is your recollection?

A. I say it may possibly be six feet, but I am not positive.

Q. Now, Mr. Heman, at Morgan street what course did the main branch of that Vandeventer Avenue sewer take?

Counsel for plaintiff objected as immaterial, and further on the ground that the cross-examination is improper from the fact that these questions relate to matters not brought out — the direct examination.

The court overruled the objection.

(Question repeated.)

A. Westward on Morgan.

Q. How far on Morgan did it go?

A. To Sarah.

Q. How far was it from Vandeventer avenue?

A. About 1,000 feet.

Q. Can you approximate the dimensions of the sewer on Morgan street from its intersection with Vandeventer avenue down to Sarah street, or westward to Sarah—approximately what were the dimensions on Morgan street?

A. Somewhere between five and six feet.

Q. Now, at Sarah street what direction did it take?

A. Northward.

Q. How far northward did it run on Sarah street?

A. To a couple of blocks north of Easton avenue; several blocks north.

25 Q. What were the dimensions of it there—from Sarah street at the junction of Morgan street northward to Easton avenue?

A. It decreased as it went along; every five or six hundred feet or a thousand feet it would decrease six inches.

Q. What — the distance from the point at Sarah and Morgan to the — you have just spoken of?

A. I should judge ten feet.

Q. Did the sewer stop there?

A. No, sir; not at Easton.

Q. Where did it go?

A. North of Easton.

Q. How far north of Easton did it go?

A. I think about three or four blocks—somewhere about that.

Q. Well, did it stop there?

A. Yes, sir.

Q. What was the point of stopping, St. Ferdinand street, is it not?

A. I think so.

Q. What was the length of that sewer you have just described from its junction with the Mill Creek sewer to the point of ending at St. Ferdinand street?

Counsel for plaintiff objected as immaterial.

A. I cannot say.

Q. Can't you approximate the number of feet?

A. I could not do it; no, sir; that is pretty hard to do; it is quite a long distance.

Q. Was it two miles?

A. I am not prepared to say.

Q. Was it half a mile?

A. More than that.

Q. Was it over two miles?

A. I don't know; I don't think it was; it might be, but I would not be positive.

Q. Was it between a mile and a half and two miles?

A. I don't know exactly.

Q. Was it over a mile and a half?

A. I don't know that it was; I could not say positively.

Q. Now Mr. Heman, I will ask you some questions in regard to the topographical——

At this point a recess was taken until 2 o'clock p. m. of the same day, when the case was resumed as follows:

26 Cross-examination of Mr. HEMAN by Mr. GROVER continued:

Q. Before the adjournment for the noon recess I was directing your attention to the sewer on Vandeventer avenue, from its junction with the Mill Creek sewer to its northern terminus; I will ask you if the sewer, concerning which you have testified, was not the main stem of the Vandeventer sewer?

Counsel for plaintiff objected on the ground that that is a question to be determined by the ordinance.

The court overruled the objection.

A. I don't know whether you call it the main stem or not.

The COURT: Explain what you mean.

By Mr. GROVER: I endeavored to trace the sewer along its main line, he said, at Morgan street it turns west, and he defined the size and dimensions. I may simplify it by asking this question.

Q. At Morgan street, where the sewer turns west, as you testified, was there not a projection along Vandeventer avenue still towards Easton avenue?

A. Yes, sir.

Q. What was the dimension of that projection along Vandeventer avenue from Morgan street?

A. I don't know.

Q. Was it as large as five feet in diameter, or six feet in diameter?

A. I could not say; I don't know what size it was.

Q. How far north did it go?

A. To Easton avenue.

Q. Can't you remember, Mr. Heman, whether that sewer, as projected north on Vandeventer avenue, from Morgan street, was larger or smaller than the sewer which went west on Morgan?

A. I think it was smaller: it naturally would be.

Q. Now, then, I will return to the question which I started
27 out with. The sewer which you defined before our noon adjournment was the main stem of that sewer, was it not?

A. Yes, sir; I don't know whether you would call it the main stem or not.

Q. It was the largest part of the sewer?

A. Yes, sir; eight feet was the largest.

Q. The largest in diameter?

A. Yes, sir.

Q. I omitted to ask you what was the diameter of the sewer on St. Ferdinand street, where it stopped.

A. That I could not tell without looking at the map: all I know is that I built it according to the plans and specifications and the ordinances given to me from time to time by the sewer department.

Q. You read the ordinances?

A. Yes, sir.

Q. And you made the sewer according to the ordinances?

A. Yes, sir.

Q. Then if the ordinances state what the dimensions of that sewer north on Sarah —, *what* would be the dimension- of the sewer that you constructed?

A. Yes, sir.

Q. Did you follow the ordinances strictly?

A. Yes, sir.

Q. Now, Mr. Heman, *are* you familiar with the ground out there, between Grand avenue and Sarah street, are you not?

A. Yes, sir.

Q. What is the first rise of ground west of Grand avenue?

A. Well, in different localities it is at different places.

Q. Well, take Lindell avenue or Olive street?
A. On Olive street the first rise would be about Sarah street.
Q. It is at Sarah street, is it not?
A. Yes, sir.
Q. Then there is a depression between Grand avenue and Sarah street?
A. Yes, sir.
Q. Now, is Vandeventer avenue at the bottom of that depression?
A. No, sir.
Q. What is the bottom of that depression between Sarah street and Grand avenue?
28 A. Between five hundred and seven hundred feet west of Vandeventer avenue.
Q. Now, is that true all the way from the Mill Creek sewer to Morgan street?
A. It is true from the Mill Creek sewer up to Washington avenue.
Q. How is it north of Washington avenue?
A. North of Washington avenue at the time there was no natural water bed there at all from the fact of its having been built up when this was built, but the natural water bed was about 500 feet west of Vandeventer avenue.
Q. There was a run there?
A. Yes, sir; the water-course.
Q. There was no sewer built along there at that time?
A. No, sir.
Q. Not along the water-course?
A. No, sir.
Q. That water-course crossed private property, didn't it?
A. Yes, sir.
Q. This water-course you have described ran along through private property?
A. Yes, sir.
Q. And in a meandering line?
A. Yes, sir.
Q. Not in a straight line, but meandering?
A. Somewhat—yes, sir.
Q. Now, this sewer, however, that you constructed was along Vandeventer avenue and pursued the old route of that meandering line—of that water-course?
A. Yes, sir.
Q. Now, at Morgan street on Vandeventer avenue, where you took that turn west—where was the lowest point or depression there between Grand avenue and Sarah street?

By Mr. ROGERS: I object to that on cross-examination as being immaterial and having no bearing on whether or not this is a district sewer, my reason being that it is nowhere determined by the charter that a district sewer shall follow a natural water-
29 course or shall not; and again because the matter of locating the main stem of the sewer or any part of the sewer is left to the discretion of the board of public improvements and the municipal assembly.

The COURT: That is the same objection you have been urging all along?

By Mr. ROGERS: Probably the same.

The court overruled the objection.

(Last question repeated, which is as follows:)

Q. Now, at Morgan street at Vandeventer avenue where you took that turn west where was the lowest part or depression there between Grand avenue and Sarah street?

A. Vandeventer avenue.

Q. Then, at some points Vandeventer avenue was the lowest point or depression and at other points it was not?

A. Yes, sir.

Q. Now, Mr. Heman, how far east of Sarah street was this natural run that you spoke of there at Lindell avenue?

A. East of Sarah street?

Q. Yes.

A. About 300 or 400 feet.

Q. The natural rise of ground was Sarah street, west of this intervening run on Lindell avenue?

A. Yes, sir.

Q. Now, I will ask you whether or not that run that you spoke of did not come down from the northwest of Lindell avenue, and cross Lindell avenue and extend due south?

A. No, sir; there were two branches—one went northwest and the other went southeast, and followed along until it struck Washington avenue; the other went due west to Lindell—to Boyle.

Q. But north of Lindell avenue there is no run, as you call it, running directly north and south?

A. Yes, sir; it ran right up to Washington avenue.

Q. Now, north of Washington avenue to Morgan street?

A. There was no depression at all except a depression of the ground; no water-course or anything of that kind.

30 —. Now, Sarah street was still at an elevation at Morgan street; I don't mean at Morgan, but where the sewer struck Sarah street; where was the elevation there along Morgan street, from Morgan street to Sarah—there was an elevation between Vandeventer avenue and Sarah street, was there not?

A. I don't understand your question.

Q. On Morgan street, between Vandeventer avenue (where the sewer turned west), and Sarah street (to which point it ran westward), was there an elevation between Vandeventer avenue and Sarah street?

A. Yes, sir.

Q. At what point?

A. About four or five hundred feet west of Vandeventer avenue.

Q. How far was it from that elevation to Sarah street?

A. About the same distance.

Q. Then there was a depression at Sarah street?

A. Yes, sir.

Q. That was a natural depression, was it?

A. Well, I don't know of any natural depression: the ground was lower than it was in the center of the block.

Q. Now, how far south on Sarah street did that depression or lower ground extend?

A. It did not extend south at all; it elevated as you went south.

Q. Did that depression at Sarah street extend northward?

A. No, sir.

Q. Was there a hill there?

A. No, sir. There was a kind of hill, and when you got over it was a level plain like that floor, but further west again was a ravine—about a thousand feet.

Q. What was the next elevation after Sarah street?

A. You would get almost to Taylor avenue before you got any depression.

Q. Then there was a depression at Sarah street?

A. No, sir; no depression.

Q. What was it?

31 A. Just before you got to Sarah street you get over a hill; then you would get a flat country.

Q. You had to come down that country to get to Sarah street?

A. Yes, sir.

Q. Then the next rise was Taylor avenue?

A. Yes, sir; a very slight rise.

Q. You would have to go north, or you had to cut through an elevation of ground to get to Taylor avenue?

A. Yes, sir.

Q. Then the sewer went north and drained that territory beyond the elevation which intervened between Vandeventer avenue and Sarah street?

A. At parts there was an elevation and other parts there was not.

Q. Now, lateral sewers intervened to this main stem, as I call it, did they not?

A. Yes, sir.

Q. You stated voluntarily here a moment ago that you constructed that sewer in accordance with the ordinances?

A. Yes, sir.

Q. Now, can you tell how many lateral sewers there were emptying into this main stem?

A. No, sir; I could not; not from memory; there are too many of them.

Q. No-, Mr. Heman, can't you approximate the number of inlets or laterals that come into that main sewer?

A. No, sir; I cannot.

By Mr. ROGERS: I object to this question at this time because counsel has laid no foundation for it as yet. He has not defined the boundaries of this sewer district. Now, I take it, the evidence will be immaterial until the court has first had some information as to the boundaries of this district; then after we have the boundaries, it would be proper enough to show the inlets, lateral sewerage, etc., within the district leading to the main stem.

The court overruled the objection.

(Last question repeated.)
A. No, sir.

32 (By Mr. GROVER:)

Q. Were there five?
A. Yes, sir; there were five.
Q. There were not a hundred?
A. I don't know; I would not say.
Q. There were not a hundred and fifty?
A. There might be two hundred and fifty.
Q. You have some idea of how many inlets there were?
A. No, sir.
Q. You have no idea at all?
A. If I stopped to see them and figure them over I could tell exactly, but I do not know from memory.
Q. Is it not a fact that there were over two hundred inlets running into that sewer?
A. I don't know, as I say; I am not positive on that point.
Q. Haven't you lately examined the map in the city hall; didn't I see you examining it?
A. No, sir; I saw you; you were examining it and I came over and looked with you, but I did not examine it for my own purpose; I have not looked at that map for eight or ten years.
Q. Didn't you have a copy of it and lay it on the table and show it to me?
A. No, sir.
Q. What was it you showed me?
A. I may have had a topographical tracing.
Q. Don't you remember yourself and myself examining that tracing?
A. We may have; yes, sir.
Q. Haven't you examined it since?
A. No, sir; I have not examined that tracing; but that is only part of the sewer.
Q. That part went to Morgan street, didn't it?
A. I don't know exactly where it did go up to; the tracing is there—you can see.
Q. Having constructed that sewer according to these ordinances which provided for inlets, you cannot say now to the court whether there was one inlet or two hundred inlets?
33 A. No, sir, not from memory; that would be impossible; I can take the map and count and tell.
Q. Can't you state from memory whether there was one inlet or two hundred?
A. I can state that I know there was more than one, but I cannot state whether there was two hundred.
Q. Would you state there were over a hundred?
A. No, sir; I cannot.
Q. Now, Mr. Heman, can you tell the character of these inlets?
A. Yes, sir.
Q. Tell the court the character; take the first one after leaving

the Mill Creek sewer; what was the character of the first one—the one running from both sides—the one from Sarah, and the one from Grand?

A. There was not any from Sarah.

Q. Well, from the west?

A. The first one was from the east.

Q. Tell us about that?

A. To the best of my recollection it was a brick sewer.

By Mr. RODGERS: Will you state what you mean by an inlet?

By Mr. GROVER: I mean side sewers coming into that main sewer, I don't mean manholes.

WITNESS: There are inlets and manholes.

(By Mr. GROVER:)

Q. I am talking about inlets?

A. No, sir; you are talking about sewers; up the alleys.

Q. What was the first sewer up an alley that came into the Mill Creek sewer?

A. A brick sewer.

Q. What was the size of it at its junction with the Vandeventer sewer?

A. Two by three or two and a half by three, I don't remember which.

Q. That came in from the east?

A. Yes, sir.

Q. A brick sewer?

A. Yes, sir.

Q. How far did it extend from Grand?

A. Only a short ways; perhaps a couple of hundred feet.

34 Q. What was the first sewer that came into that sewer from the west?

A. I think it was a pipe sewer, that was a way up near Olive street.

Q. What was the size of that pipe sewer?

A. I don't know.

Q. What was the kind of pipe?

A. Vitrified sewer pipe.

Q. How far west did that extend?

A. I think it extended to Sarah street.

Q. How many feet?

A. About a thousand feet I should judge.

Q. What was the next sewer that came into that Vandeventer sewer from the east after the first one you have described?

A. I would not be positive about the second—whether it was pipe or brick; it was back of the Laclede stables, but I don't know what it was.

Q. Can you tell the court how many brick side sewers there were coming in from the east?

A. No, sir; not unless I had a map.

Q. Can you tell from the ordinances?

A. No, I don't know that I could.
Q. Would the ordinances show the number of pipe and brick sewers?
A. Yes, sir.

The COURT: What is the purpose of cross-examining about this?
By Mr. GROVER: To see if they were in accordance with the ordinances.
The COURT: He has so stated.

(By Mr. GROVER:)

Q. I will ask you whether you constructed all these side sewers that emptied into the Mill Creek sewer in strict accordance with the dimension and material as defined in the ordinances?
A. Yes, sir.

The COURT: It seems to me the best way is to get the ordinances. His evidence is not very satisfactory; he is guessing a great deal of this.

35 (By Mr. GROVER:)

Q. Mr. Heman, I will ask if you found that contract?
A. No, sir.
Q. Have you looked for it?
A. Yes, sir, and the secretary, he tells me, he has been looking for a week or two.

The COURT: Don't his statement cover that point?

(By Mr. GROVER:)

Q. You state you cannot produce that contract?
A. No, sir, not the original.
Q. What is this paper I hand you (handing witness a paper)?
A. A proposal for sewer work.
Q. That is your bid for that work?
A. In Vandeventer sewer district No. 1.
Q. This is the bid that was accepted?
A. Yes, sir.
Q. And your contract was based on that bid?
A. Yes, sir.
Q. That is your signature?
A. Yes, sir.

Mr. GROVER: I will have to read this as it is a public document and I can read it now or later when I come to offer it. I think I had better simply have it marked as an exhibit.
Said paper was marked for the purpose of identification, Defendant's Exhibit "A."

Q. This bid is signed August Heman and bears date St. Louis, April 28th, 1886, and purports to be a bid to do certain work. I observe that on the endorsement on the back there is a date apparently of its reception, April 27th, 1886; can you explain how this bid purports to have been sent on the 28th of April, 1886, and ap-

pears to have been filed on the 27th with the board of public improvements, do you know anything about that endorsement?

Mr. ROGERS: I object to the question; I cannot understand the purport of it, but it seems to me it makes no defense on account of any informality in the bid.

The COURT: I don't see that it makes any difference; that was the bid that was accepted and acted on.

36 By Mr. GROVER: I withdraw the question.

Redirect examination by Mr. ROGERS:

Q. I believe you said that the main body of this Vandeventer Avenue sewer connected with the Mill Creek sewer, did you not?

A. Yes, sir.

Q. The sewage from the Vandeventer Avenue sewer district number 1 now flows into the Mill Creek sewer?

A. Yes, sir.

Q. Now, you began work, I suppose, at the point where the Vandeventer Avenue sewer connected with the Mill Creek sewer, did you not, and proceeded north?

A. Yes, sir.

Q. Now, in following the course mapped out from the Mill Creek sewer north, please explain to the court, as near as you can, the topography of the ground through which this Vandeventer Avenue sewer passed—I mean this main trunk going north from the Mill Creek sewer?

A. There was an elevation where it went over from Duncan avenue to Washington avenue.

Q. Duncan avenue is the point where it connects with the Mill Creek sewer?

A. Yes, sir.

Q. Between Duncan avenue and Washington avenue, was it necessary for you to make any excavation and to what extent?

A. Yes, sir; we had to excavate all the way; sometimes as high as thirty or thirty-two feet deep.

Q. Now, at other parts of that sewer, what is the depth?

A. In some places it is fifteen and sixteen feet deep.

Q. Then, why was this excavation to a depth of thirty feet or more necessary between Duncan and Washington avenues, along Vandeventer avenue?

A. On account of the elevation.

Q. I will ask you this question: Did this Vandeventer
37 Avenue sewer follow any depression in the ground between Duncan avenue and Washington avenue?

A. No, sir.

Q. What was the lay of the ground between Washington avenue and Duncan avenue through which the sewer at that point passed?

A. The ground was high.

Q. Higher than it was farther west?

A. Yes, sir.

Q. Was it higher at Vandeventer avenue than it was east some distance?

A. No, sir; east it was higher.
Q. But west it was lower?
A. Yes, sir.
Q. Then, the fact is that between Duncan avenue and Washington avenue this Vandeventer Avenue sewer did not follow any depression of the ground?
A. No, sir.
Q. That is not exactly clear that way; did it follow the depression of the ground along there or not?
A. No, sir.
Q. Then, I understand now, with regard to these inlets and lateral sewers, etc., that you do not undertake to state the number from memory?
A. No, sir.
Q. You said something about a depression that was east of Vandeventer avenue and at some point north of Washington avenue—some point, at least, north of Duncan, you spoke of a depression or run that was west.

By Mr. GROVER: You said east awhile ago.
By Mr. ROGERS: Let us take the west first.

Q. You spoke of a run west of Vandeventer avenue and north of Duncan avenue?
A. Yes, sir.
Q. Now explain to the court what you mean by the word "run"?
A. A water-course.
Q. Was the water actually running through that at the time this sewer was constructed?
A. Yes, sir.
Q. How far west of the main trunk of this main sewer?
A. Four or five hundred feet west.
Q. And I believe you said it ran between two sewers—one branch off to the east and one to the west, did you not?
A. No, sir.
38 Q. There were several places along the line of that sewer where you had to make an excavation to a considerable depth, was there not?
A. Yes, sir.
Q. At some points you would make excavations to a much greater depth than you would at other points?
A. Yes, sir.

Recross-examination by Mr. GROVER:

Q. At the point of junction between Vandeventer Avenue sewer and the Mill Creek sewer there was a depression, was there not, in what is called the Mill Creek valley?
A. I don't think Mill Creek valley extends that far.
Q. Some valley does?
A. I don't know.
Q. There was a natural depression where the Mill Creek valley

passes by and crosses Vandeventer and goes west? Don't it have a natural depression?

A. Vandeventer avenue?

Q. No, sir; Mill Creek sewer.

A. No, sir.

Q. There is no natural depression at all?

A. For part of the way there was a depression at Duncan avenue, but it was a little south and west, but there is none there now.

Q. Was the point where the Vandeventer Avenue sewer joins the Mill Creek sewer lower than where the Vandeventer Avenue sewer crosses Washington avenue?

A. I could not say about that.

Q. Was there a gradual decline in the surface?

A. No, sir; from Duncan to Laclede there is quite a rise, I suppose of ten or fifteen feet, and then it comes down.

Q. I am talking of the point where this Vandeventer Avenue sewer strikes the Mill Creek sewer.

A. You asked the question what was the difference between Duncan and Morgan.

Q. No; I said Washington avenue.

A. No, sir; there was a large hill intervening.

39 Q. As a matter of fact, wasn't Washington avenue, at the surface, higher than at the point where the Vandeventer Avenue sewer struck the Mill Creek sewer?

A. No, sir, I don't think so.

Q. Are you willing to testify, positively, that that is not so?

A. No, sir; I could not tell that; but I know there is quite a rise between the two points.

Q. I think I asked you in your cross-examination whether or not that run that you spoke of at certain points west of Vandeventer avenue was not chiefly on private property?

A. Yes, sir.

Q. Now to follow that, the city would have had to condemn the right of way?

Counsel for plaintiff objected. The court sustained the objection. To which action and ruling of the court defendants by counsel then and there duly excepted.

Q. Now, as I understand you, this main stem of the Vandeventer Avenue sewer was on a public highway all the way?

A. Yes, sir.

Q. That is the fact, is it?

A. Yes, sir.

Q. It did not cross private property anywhere?

A. Not to my knowledge.

Q. Now, the ordinances under which you were working fixed the depth of that sewer at different points?

Counsel for plaintiff objected.

A. No, sir.

Q. Do the specifications fix the depth?
A. No, sir.
Q. What does?
A. The engineer and sewer commissioner.
Q. And it was not in your contract and was not in the ordinances and not in the specifications?
A. No, sir.
Q. The city engineer did that?
A. Yes, sir.
Q. You followed his instructions?
A. Yes, sir.
Q. Who was the city engineer at that time?
40 A. Mr. McMath was; the sewer commissioner took the place of engineer.
Q. I have no doubt he is capable, but was he the official engineer at that time?
A. He was considered such.

The COURT: Who gave him the instructions, is the question, I suppose.

(By Mr. GROVER:)

Q. I want to know who the engineer was?
A. I think Mr. Milner was engineer in charge.
Q. Are you sure?
A. I think so, but I would not be positive; it is ten years ago; it is pretty hard to remember so long ago.

(By Mr. ROGERS:)

Q. I understand you to say then, that between Duncan and Washington along Vandeventer there was a hill and that this sewer ran under it?
A. Yes, sir.

The COURT: I wish to say that I propose to be a little more strict on the rule requiring counsel to finish their examination, there is a tendency to think of something afterwards in general. The result is the witness is crossed from one counsel to the other; and I will caution you to finish your examination and then in rebuttal the examination must be confined to matters in rebuttal.

By Mr. ROGERS: I only introduced the tax bill in one case, the other evidence will apply to one as much as the other.

The COURT: I understood you were to try the cases together.

By Mr. ROGERS: I propose to offer the tax bill in the Allen case afterwards. The stipulation was this: The evidence adduced here regarding this situation was to apply as much to the case against Allen as to the case against Shumate, but I am trying now only the case against Shumate.

41 The COURT: You may proceed as you please.

Mr. GROVER: I understood that he would offer both tax bills and prove them by Mr. Heman, his witness, and that my cross-examination would apply to both cases.

The COURT: Your cross-examination does apply to both cases.

By Mr. GROVER: So that with reference to the tax bill it applies in the other case the same as this.

The COURT: Yes, sir; all evidence so far taken by you and to be taken and to be put in hereafter, applies to both cases. He has, however, completed his evidence in one case only.

Plaintiff rested here.

Evidence in Behalf of Defendant-.

Defendants — sustain the issues by them to be sustained introduced the following evidence:

EMORY S. FOSTER, sworn on behalf of defendant-, testified as follows:

Direct examination by Mr. GROVER:

Q. What is your name?

A. Emory S. Foster.

Q. What is your occupation?

A. Secretary of the board of public improvements of the city of St. Louis.

Q. How long have you been secretary of the board of public improvements?

A. Since the fall of 1881.

Q. Then you were the secretary of the board at the time the ordinances were passed creating the Vandeventer Avenue sewer district number 1, and at the time the ordinances were passed which directed the construction of a sewer in that district?

A. Yes, sir.

Q. Does the board of public improvements keep records?

A. Yes, sir.

Q. Written records?

A. Yes, sir.

42 Q. Are you the custodian of those records?

A. I am.

Q. Have you got certain of the books of record here?

A. I have.

Q. I have heretofore, Mr. Foster, asked you to look up certain records in regard to the ordinances referred to, and to produce the records here, and I will ask if you have made that examination and if you have those records here?

A. I have; that is, I have the records of the passage of all the ordinances in the case.

Q. I will ask you to turn to the record showing the passage of the first ordinance which had for its purpose the creation of the sewer district known as Vandeventer Avenue sewer district number 1?

A. I find it in volume 10 of the official records of the board, page 507.

Q. Under what date?

A. Under date of November 11, '84.

Preceding the passage of the ordinance and the introduction of the ordinance, there is a report from the sewer commissioner relating to this sewer.

Q. Please read it.

(Witness read from said record as follows:)

"The sewer commissioner returned communication of the board of health recommending as a sanitary measure that district sewers be constructed in the district bounded east by Grand avenue, west by Goode avenue, north by McPherson and Easton avenue- and south by Manchester road, in the following report:

"'The request of the board of health can be substantially complied with by the creation of a large district embracing all the territory which would be drained by a sewer on Vandeventer avenue, the construction of such a sewer in such a district would occupy two years of which the first was spent in constructing the main sewer on Vandeventer avenue; this construction to be carried on simultaneously with that of the Mill Creek sewer and
43 so be made available for use. During the same year legal proceedings to open the necessary alleys in the district could be completed. I therefore recommend reference to the committee on sewers with instructions to submit an ordinance establishing Vandeventer sewer district No. 1, an ordinance providing for the construction of the sewers therein when the sewer district is established.

"'(Signed) ROBERT E. McMATH,

"'*Sewer Commissioner.*

"'St. Louis, November 11th, 1884.'"

Q. Is that all of that record?

A. (Reading:) "On motion the matter was referred to the committee on sewers with instructions as recommended," then comes another concerning the ordinance. (Continuing to read:) "Committee on sewers submitted an ordinance entitled 'An ordinance to establish Vandeventer Avenue sewer district No. 1.' The ordinance was adopted and recommended to the municipal assembly by the following vote: Ayes—Commissioners Turner, McMath, Wigel, Alt, and President Flad, 5; noes—none; absent—Commissioner Whitman, 1."

Q. Is there any record there showing the estimate?

A. No, sir.

Q. That is simply the creating of the district?

A. Yes, sir.

By Mr. GROVER: I direct the attention of the court to the fact that that is a sanitary measure and that it is not based on the fact of any benefit to the property-holders.

By the COURT:

Q. Are you able to give the number of the ordinance to which you refer?

A. No, sir. The numbering of the ordinance is done after the adoption.

(By Mr. GROVER:)

Q. What was done with that ordinance as recommended by the board?

A. It was forwarded by the president to the municipal assembly with the statement that the board recommended its adoption,
44 giving the vote. I don't speak of that from exact memory, but from a knowledge of the custom which has been in use and which has never been changed in the office. The next I find is in volume 12 of the Official Record of the Board, page 178, dated November 23, 1885. (Reading:) "Committee on sewers submitted the following-named ordinance, to wit: 'An ordinance to provide for the construction of sewers in Vandeventer Avenue sewer district No. 1.' Estimate of cost to property-owners, $250,000. On motion the estimate of cost thus submitted by the committee was adopted as the estimate of the board. The ordinance was adopted and recommended to the municipal assembly by the following vote: Ayes—Commissioners Whitman, McMath, Wigel, and Alt and President Flad, 5; noes—none; absent—Commissioner Turner, 1." I have another ordinance here, but I made a mistake of the minute I made of it in the office. This should come first before the other, it is the same date.

Q. Please read it with the explanation you have made?

A. (Reading:) "Committee on sewers submitted an ordinance entitled, 'An ordinance to amend ordinance No. 13076, entitled An ordinance to establish Vandeventer Avenue sewer district No. 1, approved December 20th, 1884.' The ordinance was adopted and recommended to the municipal assembly by the following vote: Ayes—Commissioners Turner, Whitman, McMath, Wigel and Alt and President Flad, full six. Noes—none. Afterwards Commissioner Turner withdrew." Then the one I read first on this date.

Q. As I understand you, then, on that day you produced a record showing that the original ordinance, creating the district, was amended?

A. Yes, sir; that was amended on November the 23rd.

Q. Then on the same day——

45 A. (Interrupting.) The ordinance was adopted for constructing sewers.

Q. Constructing in that district, a sewer?

A. Yes, sir.

Q. Now, what is your next record?

A. The next record in order of time is in the same volume, 12, Official Record of the Board, page 432, dated April the 7th, 1886: "The sewer commissioners submitted the following communication:

'ST. LOUIS, *April 7th*, 1886.

Honorable board of public improvements.

GENTLEMEN: I request that a day be set for the letting out of the following work'"——

Q. (Interrupting.) I will ask only for the record of this sewer.

A. That is simply the letting of this work.

Q. That is all right, then, if pertaining to this sewer?

A. Yes, sir. (Continuing to read:) "'For the construction of sewers in Vandeventer Avenue sewer district No. 1, embracing 2,848 feet of eight and a half foot diameter brick sewer; 508 feet of eight and a quarter foot diameter brick sewer; 361 feet of eight foot diameter brick sewer; 395 feet of seven and three-quarters — diameter brick sewer; 1,490 feet of six and a half foot diameter brick sewer; 654½ feet of six and a quarter foot diameter brick sewer; 575 feet of six foot diameter brick sewer; 402 feet of five and a half foot diameter brick sewer; 436 feet of five and a quarter foot diameter brick sewer; 516 feet of four and three-quarters foot diameter brick sewer; 879 feet of four by five foot diameter brick sewer; 714 feet of three and a half by four and a half foot diameter brick sewer; 647 feet of three by four foot brick sewer; 909 feet two and a half by three and a half foot diameter brick sewer; 11,884 feet of two by three foot diameter brick sewer; 15,022 feet of eighteen-inch vitrified clay pipe sewer; 17,490 feet fifteen-inch vitrified clay pipe sewer; 36,010 feet twelve-inch vitrified clay pipe sewer; 500 feet six-inch
46 *clay* vitrified clay-pipe sewer. Deposit required, $12,650.

Respectfully submitted.

ROBERT E. McMATH,
Sewer Commissioner.'

On motion, the president was directed to let the work mentioned in the foregoing communication, and April 28th, 1886, at 12 o'clock m., was set for opening bids thereunder by the following vote: Ayes—Commissioners McMath, Wigel and Alt and President Flad, 4. Noes—none. Absent—Commissioners Turner and Whitman, 2."

Q. Now, Mr. Foster, turn to the record of that letting?

A. Same book, page 467, dated April the 28th: "The following bids for public work were received and publicly opened and read, viz: Under letting No. 1726, eight bids which were referred to the committee on sewers, with instructions to report tomorrow at 12 o'clock m." Then, same book, page 473, dated April 28th, 1886: "Committee on sewers submitted the following report:

'ST. LOUIS, *April 29th*, 1886.

Hon. board of public improvements.

GENTLEMEN: Your committee on sewers hereby report that the accompanying tabular statement is a correct account of all the proposals received for the work of constructing sewers in Vandeventer Avenue sewer district No. 1, under letting No. 1726, and also certify that the lowest proposal under said letting is that of August Heman for $240,572, and recommend that the contract be awarded to him.

Respectfully,

(Signed) ROBERT E. McMATH,
THOMAS J. WHITMAN, AND
HENRY FLAD,
Committee on Sewers.'"

Then follows the tabular statement.

Q. Of the bids?

A. Showing the prices bid by all the bidders and the sum bid.

(By Mr. ROGERS:)

Q. Read it.

A. (Reading:) "Letting No. 1726, sewer department, St. Louis, April 28th, 1886. Abstract of proposals for constructing
47 sewers in Vandeventer Avenue sewer district No. 1. Bid of Fruin-Bambrick Construction Co., $283,652.05; Allen & Veaths, $267,618.75; William Skrainka, $264,550.30; August Heman, $240,572; Brewster & Co.—(I cannot read it).

The COURT: Let it go as Brewster.

(Witness, continuing:) "$247,527.70; G. Evermann, $265,282.90; John Bambrick, $280,788; G. Prendergast, $266,019.60." On motion, the report was approved and the contract awarded to August Heman, as recommended by the following vote: Ayes—Commissioners McMath, Wigel and Alt and President Flad, 4. Noes—none. Absent—Commissioners Turner and Whitman, 2.

(By Mr. GROVER:)

Q. I will ask you this question: Can you state from the face of the bids, which you have referred to there, whether or not these bids were for the work in bulk or in subdivision?

A. Subdivision.

Q. Read clear across of Mr. Heman?

A. (Reading:) "Earth excavation, one hundred and ten thousand two hundred cubic yards, 30 cents per cubic yard; rock excavation, 7,000 cubic yards, $2 per cubic yard; rubble masonry, 350 cubic yards, $3 per cubic yard; brick masonry, 16,100 cubic yards, $7 per cubic yard; 12-inch pipe, 36,010 linear feet, 80 cents per linear foot; 15-inch pipe, 17,490 feet, 90 cents per linear foot; 18-inch pipe, 15,022 linear feet, $1.25 per linear foot; 6-inch junctions, 6,060 pieces, 50 cents a piece; 9-inch junctions, 10 pieces, $1 a piece; 12-inch junctions, 137 pieces, $1.50 a piece; 15-inch junctions, 14 pieces, $1.50 a piece; inlet stone, 7,100 square stone, 70 cents; cast iron, 209,600 pounds, 3 cents per pound; wrought iron, 24,600 pounds, 5 cents per pound; concrete in place, 100 cubic yards, $4 per cubic yard; nine-inch pipe, ten feet, 50 cents per foot; 6-inch pipe, 500 feet, 50 cents per foot; 18-inch junctions, 13 pieces, $2 a piece."

48 Q. Now, in the other bids the footings which you have read were made under the same subjects?

A. Yes, sir; in the tabular statement, the same.

Q. Now, turn to your next record in that connection, Mr. Foster—you have Mr. Heman's bid, which I have produced here?

A. Yes, sir.

Q. You brought that in?

A. Yes, sir.

Mr. GROVER: In this connection I offer in evidence Mr. Heman's bid, identified by himself and Mr. Foster.

Mr. ROGERS: We object as immaterial. There is nothing said in the answer about the bid and there is no question raised by the pleadings; I object to it.

The court overruled the objection.

Said paper referred to having been marked Defendant's Exhibit "A" was here read in evidence, and is in words and figures as follows, to wit:

Proposal for Sewer-work.

Letting No. 1726.

To the honorable board of public improvements.

GENTLEMEN: The undersigned herewith propose to do all the work necessary in the construction of sewers in Vandeventer Avenue sewer district No. 1, advertised as letting No. 1726, in accordance with the printed form of contract and specifications for said work, and upon acceptance of these proposals, to execute in the form aforesaid articles of agreement for the same for the following prices, to wit:

For earth excavation, per cubic yard, thirty cents ($30–000).

For rock excavation, per cubic yard, two dollars ($2.00).

For rubble masonry, per cubic yard, three dollars ($3.00).

For brick masonry, per cubic yard, seven dollars ($7.00).

For twelve-inch pipe sewers, per foot, linear, complete, eighty cents ($80–100).

49 For fifteen-inch pipe sewers, per foot, linear, complete, ninety cents ($90–100).

For eighteen-inch pipe sewers, per foot, linear, complete, one 25–100 dollars ($1.25).

For six-inch junctions laid, each fifty cents ($50–100).

For nine-inch junctions laid, each, one dollar ($1.00).

For twelve-inch junctions laid, each, one 50–100 dollars ($1.50).

For fifteen-inch junctions laid, each, one 50–100 dollars ($1.50).

For inlet stone, per square foot, furnished and set, seventy cents ($70–100).

For cast iron in inlets and manholes, per lb., three cents ($03–100).

For wrought iron in inlets and manholes, per lb., five cents ($05–100).

For concrete in place, per cubic yard, four dollars ($4.00).

For nine-inch pipe sewers, per foot, linear, complete, fifty cents ($50–100).

For six-inch pipe sewers, per foot, linear, complete, fifty cents ($50–100).

For eighteen-inch junctions laid, each, two dollars ($2.00).

Messrs. Fred. Heman and Wm. Heman have agreed to become securities in case the contract is awarded to the undersigned. Enclosed is a certificate from the treasurer, that there has been deposited with him twelve thousand six hundred and fifty dollars; which sum is to be forfeited to the city if the party or parties making this proposal fail to enter into contract, with approved securities

within three days after the contract is awarded to said party or parties.

Respectfully,

(Name of bidder:) AUGUST HEMAN,
(Address:) 509 *Chestnut St.*

St. Louis, April 28, 1886.

NOTE.—Every proposal must conform strictly to the requirements contained in the following sections of art. 9, chap. 32 of the Revised Ordinances of 1881, otherwise it will be rejected as informal.

SEC. 3. Each bid for such work shall be written on a blank
50 to be furnished by the board of public improvements; shall be placed in a sealed envelope addressed to "President of the board of public improvements," endorsed "Proposals for public work," with the number of the letting for which the bid is made; and said bid shall not be opened before the day and hour fixed in the notice.

SEC. 4. Each bid shall be signed by the bidder, who shall state in his bid the names of the persons who will become his sureties in case the contract shall be awarded to him.

SEC. 11. If, in any bid, blanks are not properly filled up so as to make a bid complete, and without any ambiguity as to its intent and meaning; or, if a bid has any alteration or erasure upon it; or, if it be not properly signed; or, if the certificate of the treasurer, that the necessary deposit has been made, does not accompany said bid, then said bid shall be rejected.

(To avoid ambiguity, bidders are requested to write the prices in letters and figures.)

By Mr. ROGERS: I object on the general rule of practice that any matters of fact upon which the defendant relies to defeat the tax bill and destroy its validity should be set out in the answer; I find nothing in the answer relating to this bid; I cannot understand why the bid is offered; as there is nothing in the answer that raises any issue on this point the evidence would be immaterial.

The court overruled the objection.

(By Mr. GROVER:)

Q. Now, Mr. Foster, proceed to the next record.

A. I have not found my memorandum, I have the next ordinance, I think that is the next.

Q. Well, we have got down to the point of letting this contract?

A. Yes, sir.

Q. What is the date of that?

A. I gave that—volume 16 of the official records, page 63, of date June 12, 1888. (Reading:) "The sewer commissioner sub-
51 mitted the ordinance hereinafter named, to wit: An ordinance to amend ordinance No. 13482, entitled An ordinance to amend ordinance No. 13076, entitled An ordinance to establish Vandeventer Avenue sewer district No. 1. Approved December 20, 1884; approved January 29, 1886." That is the first ordinance.

(Again reading:) "An ordinance to amend ordinance No. 13596, entitled An ordinance to provide for the construction of sewers in Vandeventer Avenue sewer district No. 1; approved March 16, 1886; estimate of cost to property-owners, $250,000." The estimate of cost as submitted to the commissioner was adopted as the estimate of the board, and the ordinances were adopted as recommended to the municipal assembly by the following vote in each case: Ayes—Commissioners Turner, Holman, McMath, and Murphy, and President Flad, 6: noes—none.

Q. Now, Mr. Foster, those are the records of all the ordinances pertaining to the construction of this Vandeventer Avenue sewer No. 1.

Q. Now, will you turn to the record—the first record which your book shows—of any proceeding by the board with reference to that matter after the work was done?

A. I am looking for that; that is, the report of the sewer commissioner of the completion of the work and his acceptance. I have it now, same volume, No. 16, official records of the board, page 356, of date December 11, 1888.

(Reading:)

"The sewer commissioner submitted the following report:

ST. LOUIS, *December* 11, 1888.

I hereby certify that August Heman has completed the work embraced in his contract No. 1454 for the construction of sewers in Vandeventer sewer district No. 1, as shown on the accompanying diagram (the diagram I have not here—that is filed in the special-tax department), and that we have accepted same in accordance with the specifications and stipulations of his said contract. I have also
52 caused the said work to be carefully measured and the whole cost thereof to be computed according to the terms of the contract and hereby report that the amount is $243,336.09, and in figures as shown in detail by the statement hereto attached.

(Signed) ROBERT E. McMATH,
Sewer Commissioner."

Now follows the statement made in the form of an account:

"Computation No. 254 (that is the serial number) of the whole cost of sewers in Vandeventer Avenue sewer district No. 1, constructed by August Heman under contract No. 1454, under ordinances Nos. 13406, 13464, 13596, and 14632.

First, brick sewer eight and a half feet in diameter, 2,848 feet in length; brick sewer eight and a quarter feet in diameter, 508 feet in length; brick sewer eight feet in diameter, 361 feet in length; brick sewer seven and three-quarters feet in diameter, 597 feet long; brick sewer six and a half feet in diameter, 1,521 feet in length; brick sewer six and a quarter feet in diameter, 630 feet in length; brick sewer six feet in diameter, 583 feet in length; brick sewer five and a half feet in diameter, 402 feet in length; brick sewer four

and a half by six, 436 feet in length; brick sewer four by five and a half, 514 feet in length; brick sewer four by five, 929 feet in length; brick sewer three and a half by four and a half, 690 feet in length; brick sewer three by four, 565 feet in length; brick sewer two and a half by three, 893 feet in length; brick sewer two and a half by three, 11,371 feet in length; total length of brick sewers, 22,848 feet in length. Pipe sewers eighteen inches in diameter, 13,975 feet in length; pipe sewers fifteen feet in diameter, 17,731 feet in length; pipe sewers twelve inches in diameter, 33,850 feet in length; total length of pipe sewers, 65,556 feet in length; total length of brick and pipe sewers, 88,404 feet; 283 inlets and 337 manholes. Work completed December 1, 1888."

53 Each one of these lengths of brick and pipe sewers is given with all the particulars following in several pages.

Q. I will ask Mr. Foster what is your definition of the inlets, the 283 in number mentioned?

A. I am not able to give that information; I simply keep the record and I don't know what it means; however the action of the board referred to the president the matter of making out the necessary tax bill.

Q. That is all?

A. That is all of that particular record. Bills were brought in, if you will allow me a few minutes—I have it now—same book, vol. 16, page 413 of date Jan. 8, 1889. (Reading:) "The president submitted special-tax bills for the construction of sewers in Vandeventer Avenue sewer district, on August Heman, under contract number 1454, and ordinances numbers 13076, 13482, 13625, 14596, 14630, approved by the following vote: Ayes, Commissioners Holman, McMath, —— Murphy and President Flad, 6. Noes—none."

Q. Mr. Foster, have you found in the records of that board of public improvements any evidence of any other act on the part of the board or of its officers looking to the assessment of the cost of the construction of Vandeventer sewer, save and except those entries you have read?

A. Those are the entries I have found; I have not looked to find others; those are the records made.

Q. Those are all you know of?

A. Yes, sir.

Q. Are those records all you have found showing any action by the board, or any of its executive officers, looking to and having for its purpose the assessment of the cost of construction of this sewer against the property-holders or against any one else?

A. Yes, sir.

Q. You have produced the entire record?

A. Yes, sir.

54 Q. Now, Mr. Foster, have you found any record of any action of the board of public improvements determining whether or not the public was benefited in any way by the construction of Vandeventer sewer?

Counsel for plaintiff objected.

The court sustained the objection.

To which action and ruling of the court defendants, by counsel, then and there duly excepted.

Q. Have you any record?

A. I know of no entries.

Q. I will ask you, Mr. Foster, if you have in your custody any records showing any act of the board of public improvements, or of its officers, assessing any part of the cost of the Vandeventer Avenue sewer against the public of the city of St. Louis?

A. I have no such record. Unless the city of St. Louis might own lots in that district.

Q. Then it would be assessed like any other property?

A. Yes, sir.

Q. But, otherwise, there is nothing showing any assessment of any part of this construction against the city of St. Louis.

A. No, sir.

Cross-examination waived.

By Mr. GROVER: I offer in evidence the ordinances of the city of St. Louis, which are set out and alleged in the petition of the plaintiff in this case.

By Mr. ROGERS: Are those the ordinances set out in the answer?

By Mr. GROVER: Yes, sir. There might be some error in the typewriting but the ordinances I refer to are those in the answer and petition.

Mr. ROGERS: I make no objection if they are set out in the answer but the fact that they are set out in the petition is not sufficient ground to introduce them in evidence.

The COURT: Make your offer.

Mr. GROVER: I offer them in evidence. Ordinance of the
55 city of St. Louis creating the Vandeventer Avenue sewer district No. 1, and ordinance of the city of St. Louis directing and authorizing the construction of sewers in that district, which ordinances are set out and referred to in plaintiff's petition, and are as follows:

Creating the sewer district, ordinances numbers 13076, 13482 and ordinance 14625; ordinance of the said city providing for the construction of a sewer in that district so created, being ordinances numbers 13596 and 14630.

The court overruled the objection.

Said ordinances are in words and figures as follows, to wit:

(13076.)

An ordinance to establish Vandeventer Avenue sewer district number one.

Be it ordained by the municipal assembly of the city of St. Louis, as follows:

SECTION 1. There is hereby established in the city of St. Louis a

sewer district to be known as Vandeventer Avenue sewer district number one, bounded as follows, to wit: Beginning at a point in the centre line of Duncan avenue, where the same intersects the east line of Forest Park Boulevard addition; thence northwardly along the east line of Forest Park Boulevard addition, and said east line produced, to the centre of Laclede avenue; thence eastwardly along the centre line of Laclede avenue to a point 660 feet west of Grand avenue; thence northwardly and parallel to Grand avenue to the centre of Pine street; thence eastwardly along the centre line of Pine street to the centre of Grand avenue; thence northwardly along the centre line of Grand avenue to the centre of Lindell avenue; thence westwardly along the centre line of Lindell avenue to the west line of Grand avenue; thence northwardly along the west line of Grand avenue to the centre of Olive street, thence eastwardly along the centre line of Olive street to the centre of Grand avenue, thence northwardly along the centre line of Grand avenue to the centre line of Washington avenue
56 produced as said Washington avenue is laid out west of Grand avenue, thence westwardly along the centre line of Washington avenue to a point 370 feet west of Grand avenue, thence northwardly and parallel to Grand avenue to the centre of Delmar avenue, thence eastwardly along the centre line of Delmar avenue to the centre of Grand avenue, thence northwardly along the centre of Grand avenue to a point 150 feet south of the prolongation of the south line of Morgan street, formerly known as Hogan avenue, thence westwardly and parallel to Morgan street to a point 150 feet west of Grand avenue, thence northwardly and parallel to Grand avenue, and 150 feet west thereof to a point 150 feet north of Bell avenue, thence eastwardly and parallel to Bell avenue to the centre of Grand avenue, thence northwardly along the centre line of Grand avenue to the centre of Finney avenue produced, thence westwardly along said centre line of Finney avenue to the centre of Spring avenue produced, thence northwardly along said centre line of Spring avenue to the centre of Cook avenue; thence westwardly along the centre line of Cook avenue to the centre line of Prairie avenue produced, thence northwardly along said centre line of Prairie avenue and along the east line of ground claimed and occupied by the Citizens' Railway Company, and said east line produced, to the centre of Easton avenue, thence westwardly along the centre line of Easton avenue to the centre line of Sarah street produced, thence northwardly along the centre line of Sarah street to the centre line of St. Ferdinand avenue, thence westwardly along the centre line of St. Ferdinand avenue as established by ordinance number 12849 to the centre of Bell Glade avenue, thence northwardly along the centre line of Bell Glade avenue to the centre of the continuation of St. Ferdinand avenue as established by ordinance number 12849, thence westwardly along the centre line of St. Ferdinand avenue, as so established to the centre of Whittier street, thence southwardly along the centre line of Whittier street to the centre line of North Market street produced, thence westwardly along said centre line of North Market street to

the centre of Goode avenue, thence southwardly along the centre line of Goode avenue and said centre line produced, to the
57 centre of Easton avenue, thence westwardly along the centre line of Easton avenue to a point 25 feet west of the prolongation of the east line of lot 57 of Gregory's addition to Ellcardsville, thence southwardly and parallel to the east line of said lot 57 to the centre of a proposed east-and-west alley 20 feet wide in city block number 3728, thence to and southwardly along the line between lots 21 and 22 of block nine of Evans place to the north line of Evans avenue, thence eastwardly along the north line of Evans avenue to a point opposite the division line between lots 30 and 31 of block four of Evans place, thence to and southwardly along the lines between lots 30 and 31, 16 and 17 of said block four to the north line of Page avenue, thence eastwardly along the north line of Page avenue to a point opposite the dividing line between lots 34 and 35 of Beardslee's subdivision, thence to and southwardly along the dividing lines between lots 34 and 35, 48 and 49 of said subdivision and said lines produced to the centre of Cook avenue, thence to and southwardly along the dividing lines between lots 19 and 20, 34 and 35 of Grand addition to the centre line of Finney avenue, thence eastwardly along the centre line of Finney avenue to a point 934 feet and 6 inches west of Sarah street, thence southwardly and parallel to Sarah street to the centre of Bell avenue, thence eastwardly along the centre line of Bell avenue to the centre of Sarah street, thence southwardly along the centre of Sarah street to the centre of Westminister place, thence eastwardly along the centre of Westminister place to the west line of Vandeventer avenue, thence southwardly along the west line of Vandeventer avenue to the centre of Duncan avenue, thence eastwardly along the centre line of Duncan avenue to the place of beginning.

Approved Dec. 20, 1884.

(13482.)

An ordinance to amend an ordinance number 13076, entitled "An ordinance to establish Vandeventer Avenue sewer district number one," approved December 20, 1884.

58 Be it ordained by the municipal assembly of the city of St. Louis, as follows:

SECTION 1. Ordinance number 13076, entitled, "An ordinance to establish Vandeventer Avenue sewer district number one," approved December 20, 1884, is hereby amended by striking out section one of said ordinance and inserting in lieu thereof the following:

SECTION 1. There is hereby established, in the city of St. Louis a sewer district, to be known as Vandeventer Avenue sewer district number one, bounded as follows, to wit: Beginning at a point in the center line of Duncan avenue, where the same intersects the east line of the Forest Park Boulevard addition, thence northwardly along the east line of the Forest Park Boulevard addition; thence northwardly along the east line of Forest Park Boulevard addition and said east line produced to the centre of Laclede avenue, thence

eastwardly along the centre line of Laclede avenue to a point 600 feet west of the west line of Grand avenue; thence northwardly and parallel to Grand avenue to the centre of Pine street; thence eastwardly along the centre line of Pine street to a point 300 feet west of the west line of Grand avenue, thence northwardly and parallel to Grand avenue to the centre of Washington avenue; thence westwardly along the centre line of Washington avenue to a point 370 feet west of the west line of Grand avenue; thence northwardly and parallel to Grand avenue to the centre line of Delmar avenue; thence eastwardly along the centre line of Delmar avenue to the centre of Grand avenue; thence northwardly along the centre line of Grand avenue to a point 150 feet south of the prolongation of the south line of Morgan street, formerly known as Hogan avenue; thence westwardly and parallel to Morgan street to a point 150 feet west of the west line of Grand avenue, thence northwardly and parallel to Grand avenue to a point 150 feet north of the north line of Bell avenue, thence eastwardly and parallel to Bell avenue to the centre of Grand avenue, thence northwardly along the centre line of Grand avenue to the centre of Finney avenue produced; thence westwardly along said centre line of Finney avenue to the centre of Spring avenue
59 produced; thence northerly along said centre line of Spring avenue to the centre of Cook avenue; thence westwardly along the centre line of Cook avenue to the centre line of Prairie avenue produced; thence northwardly along said centre line of Prairie avenue and along the east line of ground claimed and occupied by the Citizens' Railway Company and said east line produced to the centre of Easton avenue; thence westwardly along the centre line of Easton avenue to a point 260 feet west of the west line of Warne avenue; thence northwardly and parallel to Warne avenue to the centre of Lucky street; thence westwardly along the centre line of Lucky street to the centre of Sarah street; thence northwardly along the centre line of Sarah street to the centre of St. Ferdinand avenue; thence westwardly along the centre line of St. Ferdinand avenue, as established by ordinance number 12849, to the centre of Belleglade avenue; thence northwardly along the centre line of Belleglade avenue to the centre of the continuation of St. Ferdinand avenue, as established by ordinance number 12849; thence westwardly along the centre line of St. Ferdinand avenue, as so established and as laid out in Robert Wash's estate subdivision, and in subdivision of the Wash estate to a point 525 feet west of the west line of Goode avenue; thence southwardly and parallel to Goode avenue to the south line of the subdivision of the Wash estate, thence eastwardly along the south line of said subdivision of the Wash estate to the centre of Goode avenue; thence southwardly along the centre line of Goode avenue and said centre line produced to the centre of Easton avenue; thence westwardly along the centre line of Easton avenue to the centre line of Pendleton avenue, and said centre line produced to the centre of Cook avenue; thence eastwardly along the centre line of Cook avenue to a point 300 feet west of the east line of Grand addition, and in the prolongation of the dividing line between lots 25 and 26 of said Grand *division*;

thence southwardly along the dividing line between said lots 25 and 26 and along the line between said Grand addition and Finney Avenue addition and said line produced to the centre line of Finney avenue; thence eastwardly along the centre line of Finney avenue
60 to a point 964 feet and 6 inches west of Sarah street; said point being in the centre line produced by Whittier street, as established by ordinance number 13020; thence southwardly with the centre line of Whittier street and said line produced to the centre of Belle avenue; thence eastwardly along the centre line of Belle avenue to a point 601 feet 6 inches west of the west line of Sarah street; thence southwardly and parallel to Sarah street to the centre of Morgan street; thence eastwardly along the centre line of Morgan street to the centre of Sarah street, thence southwardly along the centre line of Sarah street to the centre of proposed Westminster place; thence eastwardly along the centre line of proposed Westminister place to a point in the west curb line of Vandeventer avenue; thence southwardly along said west curb line of Vandeventer avenue to the centre of Duncan avenue, and thence eastwardly along the centre line of Duncan avenue to the place of beginning."

Approved January 29, 1886.

(14625.)

An ordinance to amend ordinance number 13482, entitled "An ordinance to amend an ordinance number 13076, entitled 'An ordinance to establish Vandeventer Avenue sewer district number one,'" approved December 20, 1884; approved January 29, 1886.

Be it ordained by the municipal assembly of the city of St. Louis, as follows:

SECTION 1. Ordinance number 13482, entitled, "An ordinance to amend an ordinance number 13076, entitled, 'An ordinance to establish Vandeventer Avenue sewer district number one,'" approved December 20, 1884, approved January 29, 1886, is hereby amended by striking out section 1 of said ordinance and inserting in lieu thereof the following:

SECTION 1. There is hereby established in the city of St. Louis a sewer district to be known as Vandeventer Avenue sewer district number one, bounded as follows, to wit: Beginning at a point
61 in the center line of Duncan avenue where the same intersects the east line of Forest Park Boulevard addition; *thus* northwardly along the east line of Forest Park Boulevard addition, and said east line produced to the center of Laclede avenue; thence eastwardly along the center line of Laclede avenue to a point 660 feet west of the west line of Grand avenue; thence northwardly parallel to Grand avenue, and 660 feet west of the west line thereof to the center of Pine street; thence eastwardly along the center line of Pine street to a point 300 feet west of the west line of Grand avenue; thence northwardly parallel to Grand avenue, and 300 feet west of the west line thereof to the center of Washington avenue; thence westwardly along the center line of Washington avenue to a point 370 feet west of the west line of Grand avenue; thence north-

wardly, parallel to Grand avenue and 370 feet west of the west line thereof, to the center of Delmar avenue; thence eastwardly along the center line of Delmar avenue to the center of Grand avenue; thence northwardly along the center line of Grand avenue to a point 150 feet south of the prolongation of the south line of Morgan street, formerly known as Hogan avenue; thence westwardly, parallel to Morgan street and 150 feet south of the south line thereof, to a point 150 feet west of the west line of Grand avenue; thence northwardly, parallel to Grand avenue and 150 feet west of the west line thereof, to a point 150 feet north of the north line of Bell avenue; thence eastwardly, parallel to Bell avenue and 150 feet north of the north line thereof, to the center of Grand avenue; thence northwardly along the center line of Grand avenue to the center of Finney avenue produced; thence westwardly along said center line of Finney avenue to the center of Spring avenue, produced; thence northwardly along said center line of Spring avenue to the center of Cook avenue; thence westwardly along the center line of Cook avenue to the center of Prairie avenue produced; thence northwardly along said center line of Prairie avenue, and along the east line of ground claimed by the Citizens' Railway Company and said east line produced, to the center of Easton avenue; thence westwardly along the center line of Easton avenue to a point 260 feet west of the west line of
62 Warne avenue produced; thence northwardly parallel to Warne avenue, and 260 feet west of the west line thereof, to the center of Lucky street; thence westwardly along the center line of Lucky street to the center of Sarah street; thence northwardly along the center line of Sarah street to the center of St. Ferdinand avenue; thence westwardly along the center line of St. Ferdinand avenue, as established by ordinance number 12849, to the center of Belleglade avenue; thence northwardly along the center of Belleglade avenue to the center of the continuation of St. Ferdinand avenue, as established by ordinance number 12849; thence westwardly along the center line of St. Ferdinand avenue, as so established and as laid out in Robert Wash's estate subdivision and in subdivision of the Wash estate, to a point 525 feet west of the west line of Goode avenue; thence southwardly parallel to Goode avenue, and 525 feet west of the west line thereof, to the south line of the subdivision of the Wash estate; thence eastwardly along the south line of said subdivision of the Wash estate to the center of Goode avenue; thence southwardly along the center line of Goode avenue and said center line produced to the center of Easton avenue; thence westwardly along the center line of Easton avenue to the center of Pendleton avenue produced; then southwardly along the center line of Pendleton avenue, and said line produced, to the center of Cook avenue; thence eastwardly along the center line of Cook avenue to a point 300 feet west of the east line of Grand addition, and in the prolongation of the dividing line between lots 25 and 26 of said Grand addition; thence southwardly along the dividing line between said lots 25 and 26, and along the line between said Grand addition and Finney Avenue addition, and said line produced, to the center of Finney avenue; thence eastwardly along the center line of Finney

avenue to a point 964 feet and six inches west of the west line of Sarah street, said point being in the center line produced of Whittier street, as established by ordinance number 13020; thence southwardly with the center line of Whittier street and said line produced to the center of Bell avenue; thence eastwardly along the center line of Bell avenue to a point 601 feet and 6 inches west of
63 the west line of Sarah street; thence southwardly parallel to Sarah street, and 601 feet and 6 inches west of the west line thereof, to the center of Morgan street; thence eastwardly along the center line of Morgan street to the center of Sarah street; thence southwardly along the center line of Sarah street to the center of Olive street; thence eastwardly along the center line of Olive street to the west curb line of Vandeventer avenue; thence southwardly along the said west curb line of Vandeventer avenue to the center of Duncan avenue; and thence eastwardly along the center line of Duncan avenue to the place of beginning.

Approved July 17, 1888.

(13596.)

An ordinance to provide for the construction of sewers in Vandeventer Avenue sewer district number one.

Be it ordained by the municipal assembly of the city of St. Louis, as follows:

SECTION 1. The board of public improvements is hereby authorized and directed to cause district sewers to be constructed within Vandeventer Avenue sewer district number one, with all the lateral sewers, inlets, manholes, flush-tanks, junction pieces, and other appurtenances necessary to render said sewers complete and efficient. Said sewers shall be made and located as described in the following sections of this ordinance.

SEC. 2. Main sewers made of brick, laid in hydraulic cement mortar, shall be built in Vandeventer avenue, Morgan street, Sarah street, Easton avenue, Lucky street, and Whittier street, as follows: First, a sewer eight feet and six inches in mean diameter from the center of Duncan avenue northwardly in Vandeventer avenue to the alley established by ordinance number thirteen thousand one hundred and eighty-four, in city block number thirty-nine hundred and twenty-six, between proposed Westminster place and Olive street. Second, a sewer eight feet and three inches in mean diameter from the sewer last described, northwardly in Vandeventer avenue to the alley in city block number forty-five hundred and eighty-four. Third, a sewer eight feet in mean diameter from the sewer last described,
64 northwardly in Vandeventer avenue to the alley in city block number thirty-seven hundred and fifty-one. Fourth, a sewer seven feet and nine inches in mean diameter from the sewer last described, northwardly to Morgan street. Fifth, a sewer four feet and six inches in mean diameter from the sewer last described, northwardly in Vandeventer avenue to Bell avenue. Sixth, a sewer four feet in mean diameter from the sewer last described, northwardly in Vandeventer avenue to the alley in city block number thirty-seven

hundred and forty-seven. Seventh, a sewer three feet and six inches in mean diameter from the sewer last described, northwardly in Vandeventer avenue to Finney avenue. Eighth, a sewer three feet in mean diameter from the sewer last described, northwardly in Vandeventer avenue to the alley in city block number thirty-seven hundred and thirty-nine. Ninth, a sewer two feet and six inches in mean diameter from the sewer last described, northwardly in Vandeventer avenue to the alley in city block number thirty-seven hundred and thirty-four. Tenth, a sewer six feet and six inches in mean diameter, from the seven-feet-nine-inch sewer in Vandeventer avenue at Morgan street, before described, westwardly in Morgan street to Sarah street. Eleventh, a sewer six feet and three inches in mean diameter from the sewer last described northwardly in Sarah street to the alley in city block number forty-five hundred and sixty-five. Twelfth, a sewer six feet in mean diameter from the sewer last described northwardly in Sarah street to the alley in city block number thirty-seven hundred and forty-two. Thirteenth, a sewer five feet and six inches in mean diameter from the sewer last described northwardly in Sarah street to the alley in city block number thirty-seven hundred and forty-one. Fourteenth, a sewer five feet and three inches in mean diameter from the sewer last described northwardly in Sarah street to the alley in city block number thirty-seven hundred and thirty-three. Fifteenth, a sewer four feet and nine inches in mean diameter from the sewer last described northwardly in Sarah street to the alley in city block number thirty-seven hundred and thirty-two. Sixteenth, a sewer four feet and six inches in mean diameter from the sewer last described northwardly in Sarah street to
65 Easton avenue, eastwardly in Easton avenue to Sarah street, and again northwardly in Sarah street to the alley in city block number thirty-six hundred and fifty-nine, established by ordinance number thirteen thousand one hundred and ninety-one. Seventeenth, a sewer four feet in mean diameter from the sewer last described northwardly in Sarah street to Lucky street and westwardly in Lucky street to the alley in city block number thirty-six hundred and sixty-two, established by ordinance number thirteen thousand one hundred and ninety-four. Eighteenth, a sewer three feet and six inches in mean diameter from the sewer last described westwardly in Lucky street to the alley in city block number thirty-six hundred and sixty-one, established by ordinance number thirteen thousand one hundred and ninety-five. Nineteenth, a sewer three feet in mean diameter from the sewer last described westwardly in Lucky street to Whittier street and northwardly in Whittier street to the alley in city block number thirty-six hundred and eighty. Twentieth, a sewer two feet and six inches in mean diameter from the six-feet-six-inch sewer in Morgan street, at Sarah street, before described, southwardly in Sarah street to the alley in city block number thirty-seven hundred and fifty-two.

SEC. 3. Sewers shall be built in the east and west alleys in city blocks number thirty-nine hundred and eighteen east, and thirty-nine hundred and nineteen east, as follows: First, sewers two feet and six inches in mean diameter, made of brick laid in hydraulic

cement mortar, from the main sewer in Vandeventer avenue eastwardly to the east line of Forest Park Boulevard addition.

SEC. 4. Sewers shall be built in the east and west alleys in city block number thirty-nine hundred and twenty-eight, and nineteen hundred and fifty-nine, as established by ordinances numbered twelve thousand eight hundred and forty-seven and thirteen thousand one hundred and seventy-nine, and in Cabanne street as follows: First, a sewer two feet and six inches in mean diameter, made of brick laid in hydraulic cement mortar, from the main sewer in Vandeventer avenue eastwardly four hundred feet. Second,
66 a sewer eighteen inches in diameter, made of vitrified clay pipe, from the brick sewer last described eastwardly for a distance of five hundred feet. Third, a sewer fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewer last described eastwardly to the centre of Cabanne street. Fourth, sewers twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewer last described eastwardly about three hundred feet; also in Cabanne street from Pine street to Laclede avenue.

SEC. 5. Sewers shall be built in the east and west alley in city block number thirty-nine hundred and twenty-seven, as established by ordinance number thirteen thousand one hundred and eighty-one, and in the alleys in city block number nineteen hundred and sixty, as follows: First, a sewer two feet and six inches in mean diameter, made of brick laid in hydraulic cement mortar, from the main sewer in Vandeventer avenue eastwardly seven hundred and twenty feet. Second, a sewer eighteen inches in diameter, made of vitrified clay pipe from the brick sewer last described eastwardly five hundred feet. Third, a sewer fifteen inches in diameter, made of vitrified clay pipe from the eighteen-inch pipe sewer last described eastwardly four hundred feet. Fourth, sewers twelve inches in diameter, made of vitrified clay pipe from the fifteen-inch pipe sewer last described eastwardly to the north and south alley in city block number nineteen hundred and sixty, and southwardly in said north and south alley to Pine street.

SEC. 6. Sewers shall be built in the alleys in city block number thirty-nine hundred and twenty-five, as established by ordinance number thirteen thousand three hundred and twenty-two; in McPherson avenue, in proposed Westminster place, and in Cabanne street, as follows: First, a sewer eighteen inches in diameter, made of vitrified clay pipe from the main sewer in Vandeventer avenue eastwardly four hundred and forty-five feet. Second, a sewer fifteen inches in diameter, made of vitrified clay pipe from the eighteen-inch pipe sewer last described eastwardly to the north and south
alley in said city block number thirty-nine hundred and
67 twenty-five; and in said north and south alley northwardly to proposed Westminster place. Third, sewers twelve inches in diameter, made of vitrified clay pipe in proposed Westminster place from the fifteen-inch pipe sewer last described eastwardly to Cabanne street and southwardly in Cabanne tsreet to Lindell ave-

nue, also in McPherson avenue, from the main sewer in Vandeventer avenue eastwardly about four hundred and sixty feet.

SEC. 7. Sewers shall be built in the east and west alley in city block number thirty-nine hundred and twenty-six, as established by ordinance number thirteen thousand one hundred and eighty-four, and in the east and west alley in city block number nineteen hundred and sixty-one, as follows: First, a sewer two feet and six inches in mean diameter, made of brick laid in hydraulic cement mortar, from the main sewer in Vandeventer avenue eastwardly five hundred and eighty feet. Second, a sewer eighteen inches in diameter, made of vitrified clay pipe from the brick sewer last described eastwardly six hundred feet. Third, a sewer fifteen inches in diameter, made of vitrified clay pipe from the eighteen-inch pipe sewer last described eastwardly three hundred and ten feet. Fourth, a sewer twelve inches in diameter, made of vitrified clay pipe from the fifteen-inch pipe sewer last described eastwardly about four hundred and sixty feet.

SEC. 8. Sewers shall be built in Olive street and Washington avenue, as follows: First, sewers eighteen inches in diameter, made of vitrified clay pipe from the main sewer in Vandeventer avenue eastwardly in Olive street eight hundred and ten feet, and in Washington avenue eastwardly from said main sewer seven hundred and seventy feet. Second, sewers fifteen inches in diameter, made of vitrified clay pipe from the eighteen-inch pipe sewer on Olive street above described eastwardly seven hundred feet, and from the eighteen-inch pipe sewer in Washington avenue above described, eastwardly seven hundred and fifty feet. Third, sewers twelve inches in diameter, made of vitrified clay pipe from the fifteen-inch pipe sewers in Olive street and Washington avenue above described, eastwardly about four hundred and forty feet.

68 SEC. 9. Sewers shall be built in the east and west alleys in city blocks number thirty-seven hundred and fifty-one and twenty-two hundred and eighty-eight south, and in Delmar avenue, as follows: First, a sewer eighteen inches in diameter made of vitrified clay pipe from the main sewer in Vandeventer avenue, eastwardly in the east and west alley in city block number thirty-seven hundred and fifty-one, a distance of six hundred and seventy feet. Second, a sewer fifteen inches in diameter made of vitrified clay pipe from the eighteen-inch pipe sewer last described eastwardly six hundred feet. Third, sewers twelve inches in diameter made of vitrified clay pipe from the fifteen-inch pipe sewer last described eastwardly five hundred and fifty feet, and from the main sewer in Vandeventer avenue eastwardly in Delmar avenue three hundred and fifty feet.

SEC. 10. Sewers shall be built in the east and west alleys in city block number thirty seven hundred and fifty, as established by ordinance number thirteen thousand one hundred and eighty-seven, in the alleys in city block number twenty-two hundred and eighty-eight north, as established by ordinance number thirteen thousand and two, and in Cabanne street, as established by ordinance number eleven thousand eight hundred and fifty-two, as follows: First,

a sewer eighteen inches in diameter made of vitrified clay pipe from the main sewer in Vandeventer avenue eastwardly to Cabanne street. Second, a sewer fifteen inches in diameter made of vitrified clay pipe from the eighteen-inch pipe sewer last described eastwardly five hundred feet. Third, sewers twelve inches in diameter made of vitrified clay pipe from the fifteen-inch pipe sewer last described, eastwardly to the north and south alley in city block numbered twenty-two hundred and eighty-eight, north and southwardly in said north and south alley to Delmar avenue, and in Cabanne street from the eighteen-inch pipe sewer above described southwardly to Delmar avenue.

SEC. 11. Sewers shall be built in Morgan street, Bell avenue and Cabanne street, as follows: First, sewers two feet six inches
69 in mean diameter, made of brick laid in hydraulic cement mortar from the main sewer in Vandeventer avenue eastwardly four hundred and seventy-five feet in Morgan street, and four hundred and ninety feet in Bell avenue. Second, sewers eighteen inches in diameter made of vitrified clay pipe, from the brick sewers above described eastwardly to Cabanne street. Third, sewers fifteen inches in diameter, made of vitrified clay pipe from the eighteen-inch pipe sewers last described, eastwardly in Morgan street two hundred and fifty feet, and in Bell avenue three hundred and ten feet, and in Cabanne street from the eighteen-inch pipe sewer above described in Morgan street; from Morgan street northwardly about two hundred and seventy feet. Fourth, sewers twelve inches in diameter, made of vitrified clay pipe, eastwardly from the fifteen-inch pipe sewer above described in Morgan street, about seven hundred feet, and from the fifteen-inch pipe sewer above described in Bell avenue eastwardly about six hundred feet.

SEC. 12. Sewers shall be built in the east and west alley in city blocks number thirty-seven hundred and forty-seven and thirty-seven hundred and nine, and in Saint Alphonsus street, as follows: First, a sewer two feet and six inches in mean diameter, made of brick, laid in hydraulic cement mortar from the main sewer in Vandeventer avenue, eastwardly in above said alley seven hundred and thirty feet. Second, a sewer eighteen inches in diameter, made of vitrified clay pipe, eastwardly from the brick sewer last described six hundred and fifty feet. Third, a sewer fifteen inches in diameter, made of vitrified clay pipe, eastwardly from the eighteen-inch pipe sewer last described to Saint Alphonsus street. Fourth, a sewer twelve inches in diameter, made of vitrified clay pipe, in Saint Alphonsus street, from Bell avenue to Finney avenue.

SEC. 13. Sewers shall be built in the east and west alleys in city blocks number thirty-seven hundred and thirty-eight, thirty-seven hundred and thirty-seven and thirty-seven hundred and thirty-nine; in the north and south alleys in city block number thirty-seven hundred and thirty-nine and in Krum avenue, as follows:
70 First, sewers eighteen inches in diameter, made of vitrified clay pipe, from the main sewer in Vandeventer avenue eastwardly three hundred and fifty feet; in the east and west alley in city block numbered thirty-seven hundred and thirty-eight, and two

hundred and ninety feet in the east and west alley in city block number thirty-seven hundred and thirty-nine. Second, sewers fifteen inches in diameter, made of vitrified clay pipe, eastwardly from the eighteen-inch pipe sewers above described three hundred and fifty feet in city blocks number thirty-seven hundred and thirty-eight and thirty-seven hundred and thirty-seven, and in city block number thirty-seven hundred and thirty-nine, to the north and south alley in said block. Third, sewers twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewer in city block number thirty-seven hundred and thirty-seven, above described, eastwardly to Spring avenue; in the north and south and east and west alleys in city block number thirty-seven hundred and thirty-nine, from the fifteen-inch pipe sewer above described southwardly to Cook avenue and eastwardly to Prairie avenue and in Krum avenue from Finney avenue to Cook avenue.

SEC. 14. Sewers shall be built in the east and west alley in city block number thirty-seven hundred and thirty-five, and in alleys in city block number thirty-seven hundred and thirty-four as already dedicated and as established by ordinance number thirteen thousand and twenty-two; in Vandeventer avenue and in Easton avenue, as follows: First, sewers eighteen inches in diameter, made of vitrified clay pipe, from the main sewer in Vandeventer avenue eastwardly two hundred and ninety feet; in the east and west alley in city block number thirty-seven hundred and thirty-five, and in city block number thirty-seven hundred and thirty-four, eastwardly and southwardly to the intersection of the western north and south alley with the southern east and west alley in said block. Second, sewers fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewers above described eastwardly two hundred and fifty feet in said block number thirty-seven hundred and thirty-five, in city block number thirty-seven hundred and thirty-four eastwardly
71 to the eastern north and south alley in said block, and in Vandeventer avenue from the end of the main sewer northwardly to Easton avenue. Third, sewers twelve inches in diameter, made of vitrified clay pipe, eastwardly in city block number thirty-seven hundred and thirty-five, from the fifteen-inch pipe sewer above described to Prairie avenue; in city block number thirty-seven hundred and thirty-four from the fifteen-inch pipe sewer above described southwardly to Evans avenue, and in Easton avenue from the fifteen-inch pipe sewer in Vandeventer avenue, above described, eastwardly about four hundred and fifty-five feet.

SEC. 15. Sewers shall be built in proposed Westminster place, Warne avenue and Sarah street and in the alley in city block number thirty-nine hundred and twenty-four, as established by ordinance number thirteen thousand one hundred and eighty-five and in the alley in city block number forty-five hundred and eighty-four, as now dedicated and proposed along the line between United States surveys number sixteen hundred and sixty-three and sixteen hundred and sixty-four, as follows: First, a sewer two feet and six inches in mean diameter, made of brick laid in hydraulic cement mortar, from the main sewer in Vandeventer avenue westwardly in

the east and west alley in city block number thirty-nine hundred and twenty-four, a distance of five hundred and twenty feet. Second, sewers eighteen inches in diameter, made of vitrified clay pipe, from the brick sewer just described westwardly in city block number thirty-nine hundred and twenty-four, a distance of four hundred and twenty feet, and on Sarah street from the southern end of the main sewer described in section one of this ordinance, southwardly to the line between United States surveys number sixteen hundred and sixty-three and sixteen hundred and sixty-four, and in the east and west and north and south alleys in city block number forty-five hundred and eighty-four from the main sewer in Vandeventer avenue to a point about two hundred and ninety feet west of Vandeventer avenue. Third, sewers fifteen inches in diameter made of vitrified clay pipe, from the eighteen-inch pipe sewers in city blocks number thirty-nine hun-
72 dred and twenty-four and forty-five hundred and eighty-four, above described, westwardly two hundred and fifty feet in said city block number forty-five hundred and eighty-four, and two hundred and eighty feet in said city block number thirty-nine hundred and twenty-four, and from the main sewer in Vandeventer avenue westwardly in proposed Westminster place about three hundred and seventy-five feet. Fourth, sewers twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewer in city block number thirty-nine hundred and twenty-four, westwardly to Sarah street and southwardly in Sarah street to proposed Westminster place. From the fifteen-inch pipe sewer in city block number forty-five hundred and eighty-four westwardly four hundred feet; also from the eighteen-inch pipe sewer in Sarah street at the line between United States surveys number sixteen hundred and sixty-three and sixteen hundred and sixty-four, eastwardly along the line about four hundred and fifty feet, and in Warne avenue from the eighteen-inch pipe sewer above described, southwardly to proposed Westminster place.

SEC. 16. Sewers shall be built in the east and west alleys in city blocks number thirty-seven hundred and fifty-two, thirty-seven hundred and fifty-three and thirty-seven hundred and fifty-four and in the north and south alley, in city block number thirty-seven hundred and fifty-four, as follows: First, sewers fifteen inches in diameter, made of vitrified clay pipe, from the six-feet-six-inch brick sewer in Morgan street northwardly in the north and south alley in city block number 3754 to the east and west alley in said city block number 3754 and westwardly in said east and west alley to a point 360 feet west of Vandeventer avenue; in the east and west alley in city block number 3752 from the main sewer in Vandeventer avenue westwardly 360 feet and from the main sewer in Sarah street eastwardly two hundred and eighty feet; in the east and west alley in city block number 3753, from the main sewer in Vandeventer avenue westwardly 400 feet and from the main sewer in Sarah street eastwardly 290 feet and in the alley in city block number 3754
73 north of the St. Louis Cable and Western railway from the main sewer in Sarah street eastwardly 280 feet. Second,

sewers twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewers in city block number 3752 and 3753 above described westwardly 500 feet and eastwardly 300 feet; from the fifteen-inch pipe sewers in city block number 3754 above described westwardly 300 feet and eastwardly in the alley north of the Saint Louis Cable and Western railway about 500 feet.

SEC 17. Sewers shall be built in the east and west alley in city block number 4565, established by ordinance number 13188; in Fairfax avenue and in Finney avenue, as follows: First, sewers, fifteen inches in diameter, made of vitrified clay pipe, in the east and west alley in city block number 4565, established by ordinance number 13188, westwardly from the main sewer in Vandeventer avenue 235 feet and eastwardly from the main sewer in Sarah street 275 feet. Second, sewers twelve inches in diameter, made of vitrified clay pipe, in said alley in city block number 4565 from the fifteen-inch pipe sewers above described westwardly 500 feet and eastwardly 450 feet; in Fairfax avenue westwardly from the main sewer in Vandeventer avenue 700 feet, and eastwardly from the main sewer in Sarah street 750 feet, and in Finney avenue from the main sewer in Sarah street eastwardly 680 feet.

SEC. 18. Sewers shall be built in the north and south and east and west alleys in city block number 3742 as dedicated and established by ordinance 13198; in the north and south alley in city block number 3740, in the east and west alley in city block number 3741, in Finney avenue, in Cook avenue and in Page avenue, as follows: First, a sewer two feet and six inches in mean diameter, made of brick laid in hydraulic cement mortar, from the main sewer in Sarah street eastwardly in the east and west alley in city block number 3741, a distance of 220 feet. Second, sewers eighteen inches in diameter, made of vitrified clay pipe, from the brick sewer last described eastwardly 400 feet, and from the main sewer in Vandeventer avenue westwardly in Finney avenue to the north and south alley in city block number 3742 and northwardly in said north and south alley to the east and west alley in said block. Third, sewers fifteen inches in diameter made of vitrified clay pipe, from the eighteen-inch pipe sewer in city block number 3742 last described, northwardly to Cook avenue; from the main sewer in Sarah street eastwardly in the east and west alley in city block number 3742 a distance of 320 feet and from the eighteen-inch pipe sewer in city block number 3741 eastwardly 320 feet. Fourth, sewers twelve inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewer in city block number 3742, above described, westwardly 500 feet; from the fifteen-inch pipe sewer in the east and west alley of said city block eastwardly 500 feet; from the fifteen-inch pipe sewer at Cook avenue above described northwardly in the north and south alley in city block number 3740 to Page avenue and westwardly in Page avenue to Jones avenue; also westwardly in Cook avenue from said fifteen-inch pipe sewer 400 feet in Finney avenue from the eighteen-inch pipe sewer above described westwardly to a suitable connection with the twelve-inch pipe sewer in

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said avenue laid by C. M. Newcomb and others under permit number 16577; and in Page avenue from the main sewer in Sarah street eastwardly 400 feet.

SEC. 19. Sewers shall be built in the east and west alley in city block number 3733 and in the alleys in city block number 3732 as said alleys have been dedicated or established by ordinance number 13024, and in Evans avenue, as follows: First, sewers two feet and six inches in mean diameter, made of brick laid in hydraulic cement mortar, from the main sewer in Sarah street eastwardly in the east and west alley in city block number 3733, a distance of 200 feet and in the east and west and western north and south alleys in city block number 3732 from the main sewer in Sarah street to the southern east and west alley in said block. Second, sewers eighteen inches in diameter made of vitrified clay pipe, from the brick sewer in city block number 3733; above described, eastwardly 300 feet and from the brick sewer in city block number 3732 eastwardly 220 feet. Third, sewers fifteen inches in diameter, made of
75 vitrified clay pipe, from the eighteen-inch pipe sewer in city block number 3733, above described, eastwardly 225 feet and westwardly in said block from the main sewer in Vandeventer avenue 205 feet; from the eighteen-inch pipe sewer in city block number 3732 above described, eastwardly 200 feet and westwardly in said block number 3732, from the main sewer in Vandeventer avenue to a point in the southern east and west alley in said block, 240 feet west of Vandeventer avenue. Fourth, sewers twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewers in city block number 3733, above described, eastwardly and westwardly 275 feet; from the fifteen-inch pipe sewer in city block number 3732, above described, eastwardly 300 feet and westwardly 300 feet, and in Evans avenue from the main sewer in Sarah street eastwardly 400 feet.

SEC. 20. Sewers shall be built in the east and west alleys in city blocks number- 3658, 3659, 3660 and 3681, as said alleys have been dedicated or established by ordinance- numbered 13190, 13191 and 13192; in Belleglade avenue and in Goode avenue, as follows: First, a sewer two feet and six inches in mean diameter, made of brick, laid in hydraulic cement mortar, from the main sewer in Sarah street, westwardly in the said east and west alley to the center of Belleglade avenue. Second, a sewer eighteen inches in diameter, made of vitrified clay pipe, from the brick sewer last described, westwardly in said alley 325 feet. Third, a sewer fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewer last described, westwardly 230 feet. Fourth, sewers twelve inches in diameter, made of vitrified clay pipe, from the main sewer in Sarah street eastwardly in alley in city block number 3658, about 455 feet; in the alley in city block number 3681, from the fifteen-inch pipe sewer above described, westwardly to Goode avenue and southwardly in Goode avenue to Easton avenue, and in Belleglade avenue southwardly from the brick sewer above described to Easton avenue.

SEC. 21. Sewers shall be built in all the alleys in city blocks num-

ber- 3662, 3663, 3661 and 3664, as established by ordinanc
76 13194, 13193, 13195 and 13196, respectively; in Garfield—
established by ordinance number 12848, and in St. Ferd
nand avenue as established by ordinance number 12849, as follow
First, sewers two feet and six inches in mean diameter, made
brick, laid in hydraulic cement mortar, from the main sewer
Lucky street northwardly in alley in city block number 3661,
distance of 450 feet, and in the alley in city block number 3662,
distance of one hundred and eighty-five feet. Second, sewers eigh
teen inches in diameter, made of vitrified clay pipe, from the bric
sewer above described northwardly in city blocks number- 3661 an
3664, a distance of 310 feet, and in city block number 3662
Garfield avenue. Third sewers fifteen inches in diameter, made
vitrified clay pipe, from the eighteen-inch pipe sewers just abov
described, northwardly in city block number 3664, a distance
300 feet, in city block number 3663, a distance of 315 feet. Fourth
sewers twelve inches in diameter, made of vitrified clay pipe, fro
the fifteen-inch pipe sewers just described, northwardly to St. Ferdi
nand avenue and eastwardly and westwardly in St. Ferdinan
avenue to Belleglade avenue and in Garfield avenue eastwardl
from the eighteen-inch pipe sewer above described to Belleglad
avenue and Sarah street.

SEC. 22. Sewers shall be built in the alleys in city blocks num
bered 3677, 3678, 3679, 3680, 3684, 3685, and 3686; in Whittie
street, in Lucky street, in North Market street and in Garfield
avenue, as follows: First, sewers two feet and six inches in mean
diameter, made of brick laid in hydraulic cement mortar, from the
main sewer in Whittier street, northwardly in Whittier street to
the east and west alley in city block number 3678 and from the
main sewer in Whittier street westwardly in the east and west alley
in city block number 3680 to the north and south alley in said
block and northwardly in said north and south alley and in the north
and south alley in city block number 3679 to Garfield avenue.
Second, sewers eighteen inches in diameter, made of vitrified clay
pipe from the brick sewer at the intersection of the east
and west with the north and south alleys in city block
number 3680, southwardly on the said north and south
alley to Lucky street, and westwardly in Lucky street
77 to the centre of Goode avenue; in Garfield avenue, from
the brick sewer above described, westwardly to the north
and south alley in city block number 3685, and northwardly in
said north and south alley to the east and west alley in said
block; and in Whittier street, from the end of the brick sewer above
described, northwardly to the east and west alley in city block
number 3677. Third, sewers fifteen inches in diameter, made of
vitrified clay pipe, in each of the east and west alleys in city blocks
number- 3677 and 3678, from the sewer in Whittier street above de-
scribed, westwardly 225 feet; and in the north and south alleys in
city blocks number- 3685 and 3686, from the eighteen-inch pipe
sewer above described, northwardly to the east and west alley in
city block number 3686. Fourth, sewers twelve inches in diameter,

made of virified clay pipe, from the eighteen-inch pipe sewer above described, northwardly in Whittier street to St. Ferdinand avenue; in the east and west alleys in city blocks number- 3677 and 3678, from the fifteen-inch pipe sewer above described westwardly to the north and south alleys in said blocks and in said north and south alleys from North Market street to St. Ferdinand avenue and from Garfield avenue to North Market street respectively; from the brick sewer in Whittier street above described westwardly in the east and west alley in city block number 3679 about 350 feet; in the north and south alley in city block number 3684 from the eighteen-inch pipe sewer in Garfield avenue southwardly to the boundary line of the district, from the eighteen-inch pipe sewer above described westwardly in the east and west alley in city block number 3685, a distance of 375 feet; from the fifteen-inch pipe sewer above described, westwardly in the east and west alley in city block number 3686, a distance of 370 feet, and northwardly in the north and south alley in said block to St. Ferdinand avenue in North Market street from the fifteen-inch pipe sewer above described, eastwardly to Goode avenue and in Garfield avenue from the eighteen-inch pipe sewer above described westwardly 380 feet.

SEC. 23. Sewers shall be built in east and west alleys in
78 city blocks number- 3731 and 3728 as said alleys are now laid out or established by ordinance number 13025, and in the east and west alleys in city blocks number- 3730 and 3729 and in Whittier street, as follows: First, sewers two feet and six inches in mean diameter, made of brick, laid in hydraulic cement mortar, from the main sewer in Sarah street westwardly in city blocks number- 3731 and 3728, to a point 810 feet west of Sarah street; and in the east and west alley in city block number 3730, from the main sewer in Sarah street westwardly to the centre of Whittier street. Second, sewers eighteen inches in diameter, made of vitrified clay pipe, from the brick sewers just described westwardly in city block number 3728, a distance of three hundred feet, and in city block number 3729, a distance of 590 feet. Third, sewers fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewer above described, westwardly in city block number 3728, a distance of 300 feet; and in city block number 3729, a distance of 280 feet, and in Whittier street from the brick sewer above described southwardly to Page avenue. Fourth, sewers twelve inches in diameter made of vitrified clay pipe, from the fifteen-inch pipe sewers in city block- number- 3728 and 2729 westwardly to Pendleton avenue, and in Whittier street from the brick sewer last above described northwardly to Evans avenue.

SEC. 24. Sewers shall be built in the east and west alleys in city blocks number- 3744, 3745, 3743 and 3746 and in Whittier street as follows: First, sewers two feet and six inches in mean diameter, made of brick laid in hydraulic cement mortar, from the main sewer in Sarah street westwardly in city blocks numbers 3744 and 3745 to a point 886 feet west of Sarah street and in city block number 3743 a distance of 270 feet. Second, sewers eighteen inches in diameter, made of vitrified clay pipe, from the brick sewers above described

westwardly in city block number 3745 a distance of 300 feet, and in city block number 3743 to the centre of Whittier street. Third, sewer fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewers above described westwardly in
79 city block number 3745 a distance of 225 feet and in city block number 3746 a distance of 290 feet, and from the eighteen-inch pipe sewer last above described northwardly in Whittier street to Cook avenue. Fourth, sewers twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewers above described westwardly in city block number 3745 to Pendleton avenue and in city block number 3746 westwardly about 345 feet.

SEC. 25. Sewers shall be laid in the east and west alley established in city block number 4566, by ordinance number 13189; in both of the east and west alleys in city block number 3755; in Finney avenue and in Fairfax avenue, as follows: First, a sewer eighteen inches in diameter, made of vitrified clay pipe, from the main sewer in Sarah street westwardly in the alley in city block number 4566 a distance of 360 feet. Second, sewers fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewer above described, westwardly in city block number 4566, a distance of 360 feet; in both the east and west alleys in city block number 3755, from the main sewer in Sarah street, westwardly 305 feet; in Fairfax avenue from the main sewer in Sarah street westwardly 510 feet, and in Finney avenue from the main sewer in Sarah street westwardly 510 feet. Third, sewers twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewers above described westwardly in the east and west alleys in city block number 4566, and in Fairfax avenue and in Finney avenue to Whittier street, as said Whittier street is established by ordinance number 13020; and in both of the east and west alleys in city block number 3755 westwardly from the fifteen-inch pipe sewers above described 300 feet.

SEC. 26. As soon as said district sewers with their inlets, manholes and other appurtenances are fully completed, the board of public improvements shall cause to be computed the whole cost thereof and shall assess it as a special tax against all the lots of ground in said district respectively, without regard to improvements and in proportion as their respective areas bear to the area of the whole district, exclusive of public highways; and the board shall cause to
80 be made out a certified bill of such assessment against each lot in the district in the name of the owner thereof. And said special tax bills shall be made out by the president of said board and by him registered in his office in full and certified and delivered to the comptroller, and his receipt taken therefor and by him registered and countersigned and delivered to the party in whose favor they are issued for collection and his receipt taken in full of all claims against the city on account of said work.

Approved March 16, 1886.

(14630.)

An ordinance to amend ordinance number 13596, entitled "An ordinance to provide for the construction of sewers in Vandeventer Avenue sewer district number one," approved March 16, 1886.

Be it ordained by the municipal assembly of the city of St. Louis, as follows:

SECTION 1. Ordinance number 13596 entitled: "An ordinance to provide for the construction of sewers in Vandeventer Avenue sewer district number one," is hereby amended by striking out sections 4, 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 25, and inserting in lieu thereof sections having the same numbers, as follows:

SEC. 4. Sewers shall be built in the east and west alleys in city blocks number- 3928 and 1959, and in Cabanne street, as follows:

First. A sewer two feet and six inches in mean diameter, made of brick laid in hydraulic cement mortar, from the main sewer in Vandeventer avenue eastwardly about 417 feet.

Second. A sewer eighteen inches in diameter, made of vitrified clay pipe, from the brick sewer last described, eastwardly for a distance of about 500 feet.

Third. A sewer fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewer last described, eastwardly to the center of Cabanne street.

Fourth. Sewers twelve inches in diameter, made of vitrified
81 clay pipe, from the fifteen-inch pipe sewer last described, eastwardly about 300 feet; also in Cabanne street from Pine street to Laclede avenue.

SEC. 5. Sewers shall be built in the east and west alleys, in city blocks 3927 and 1960, as follows:

First. A sewer two feet and six inches in mean diameter, made of brick laid in hydraulic cement mortar, from the main sewer in Vandeventer avenue eastwardly about 720 feet.

Second. A sewer eighteen inches in diameter, made of vitrified clay pipe, from the brick sewer last described, eastwardly about 500 feet.

Third. A sewer fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewer last described, eastwardly about 400 feet.

Fourth. Sewers twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewer last described, eastwardly to the north and south alley in city block number 1960, and southwardly in north and south alley to Pine street.

SEC. 7. Sewers shall be built on the east and west alleys in city blocks number- 3926 and 1961, as follows:

First. A sewer two feet and six inches in mean diameter, made of brick laid in hydraulic cement mortar, from the main sewer on Vandeventer avenue eastwardly about 580 feet.

Second. A sewer eighteen inches in diameter, made of vitrified clay pipe; from the brick sewer last described, eastwardly about 600 feet.

Third. A sewer fifteen inches in diameter, made of vitrified clay

pipe, from the eighteen-inch pipe sewer last described, eastwardly about 310 feet.

Fourth. A sewer twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewer last described, eastwardly about 460 feet.

SEC. 8. Sewers shall be built in city blocks numbered 4585 and 2287, in Washington avenue, Olive street and Cabanne street, as follows: First. Sewers eighteen inches in diameter, made of vitrified clay pipe, from the main sewer in Vandeventer avenue, eastwardly in Washington avenue about 875 feet; and from the main
82 sewer in Vandeventer avenue eastwardly along the right of way of the St. Louis Cable and Western Railway Company and near the north line thereof (said St. Louis Cable and Western Railway Company having conveyed to the city of St. Louis the right to construct and maintain a district sewer in their right of way), to Cabanne street. Second. Sewers fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewer at Cabanne street above described eastwardly along the aforesaid right of way, about 530 feet, and in Cabanne street from the eighteen-inch pipe sewer above described southwardly to Olive street, and thence eastwardly in Olive street to Cabanne street, running south, and in Olive street from the main sewer in Vandeventer avenue eastwardly about 350 feet. Third. Sewers twelve inches in diameter, made of vitrified clay pipe from the eighteen-inch pipe sewer in Washington avenue eastwardly about 80 feet; from the fifteen-inch pipe sewer, first above described, eastwardly along a right of way granted by sundry persons to the city of St. Louis, about 280 feet, and in Cabanne street, from the eighteen-inch pipe sewer, above described, northwardly to Washington avenue.

SEC. 9. Sewers shall be built in the east and west alleys in city blocks number- 3751 and 2288 south, and in Delmar avenue, as follows:

First. A sewer eighteen inches in diameter, made of vitrified clay pipe, from the main sewer in Vandeventer avenue, eastwardly in the east and west alley, in city block number 3751, about 670 feet.

Second. A sewer fifteen inches in diameter made of vitrified clay pipe, from the eighteen-inch pipe sewer last described, eastwardly about 600 feet.

Third. Sewers twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewer, last described, eastwardly about 550 feet, and from the main sewer in Vandeventer avenue eastwardly in Delmar avenue, about 350 feet.

SEC. 11. Sewers shall be built in Morgan street, Bell avenue and Cabanne street, as follows: First: Sewers two feet and six inches in mean diameter, made of brick laid in hydraulic cement
83 mortar, from the main sewer in Vandeventer eastwardly about 506 feet in Morgan street and about 490 feet in Bell avenue. Second. Sewers eighteen inches in diameter, made of vitrified clay pipe, from the brick sewers above described, eastwardly to Cabanne street. Third. Sewers fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewers last de-

scribed, eastwardly in Morgan street about 250 feet, and in Bell avenue about 310 feet; and in Cabanne street, from the eighteen-inch pipe sewer above described in Morgan street northwardly about 270 feet. Fourth. Sewers twelve inches in diameter, made of vitrified clay pipe, eastwardly from the fifteen-inch pipe sewer above described in Morgan street, about 700 feet, and from the fifteen-inch pipe sewer above described in Bell avenue eastwardly about 640 feet.

SEC. 12. Sewers shall be built in the east and west alleys in city blocks number 3747 and 3749, in St. Alphonsus street and in Windsor place, as follows: First. A sewer two feet and six inches in mean diameter, made of brick, laid in hydraulic cement mortar, from the main sewer in Vandeventer avenue eastwardly in the alley in city block number 3747 about 730 feet. Second. A sewer eighteen inches in diameter, made of vitrified clay pipe, eastwardly from the brick sewer last described, about 650 feet. Third. Sewers fifteen inches in diameter, made of vitrified clay pipe, eastwardly from the eighteen-inch pipe sewer last described, to St. Alphonsus street; and in Windsor place, from the main sewer in Vandeventer avenue, eastwardly about 350 feet. Fourth. A sewer twelve inches in diameter, made of vitrified clay pipe, in St. Alphonsus street, from Bell avenue to Finney avenue.

SEC. 13. Sewers shall be built in the east and west alleys in city blocks 3738, 3737, and 3739, in the north and south alley in city block number 3739, and in Krum avenue, as follows: First. Sewers eighteen inches in diameter, made of vitrified clay pipe, from the main sewer in Vandeventer avenue eastwardly about 350 feet, in the east and west alley in city block number 3738, and about 290 feet in the east and west alley in city block number 3738, and about 290 feet in the
84 east and west alleys in city block number 3739. Second. Sewers fifteen inches in diameter, made of vitrified clay pipe, eastwardly from the eighteen-inch pipe sewers above described, about 350 feet, in city blocks 3738, 3737, and in city block number 3739, to the north and south alley in said block. Third, sewers twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewer above described, in city block number 3737, eastwardly to Spring avenue, in the north and south and east and west alleys, in city block number 3739, from the fifteen-inch pipe sewer above described southwardly to Cook avenue and eastwardly to Prairie avenue, and in Krum avenue from Finney avenue to Cook avenue.

SEC. 14. Sewers shall be built in the east and west alley in city block number 3735, and in the alleys in city block number 3734, in Vandeventer avenue and in Easton avenue, as follows: First, sewers eighteen inches in diameter, made of vitrified clay pipe, from the main sewer in Vandeventer avenue eastwardly about 290 feet in the east and west ally in city block number 3735; and in city block number 3734 eastwardly and southwardly to the intersection of the western north and south alley with the southern east and west alley in said block. Second, sewers fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewers above

described, eastwardly about 260 feet in city block number 3735; in city block number 3734 eastwardly to the eastern north and south alley in said block, and in Vandeventer avenue, from the end of the main brick sewer northwardly to Easton avenue. Third, sewers twelve inches in diameter made of vitrified clay pipe, eastwardly in city block number 3735, from the fifteen-inch pipe sewer above described eastwardly to Prairie avenue; in city block number 3734 from the fifteen-inch pipe sewer above described southwardly to Evans avenue; and in Easton avenue from the fifteen-inch pipe sewer in Vandeventer avenue above described eastwardly about 455 feet.

SEC. 15. Sewers shall be built in Sarah street, and in the alleys in city block number 4584, as follows: First, sewers eighteen
85 inches in diameter made of vitrified clay pipe, in Sarah street from the southern end of the main sewer described in section two of this ordinance, southwardly to the alley in city block number 4584; and in the east and west and north and south alleys in said city block number 4584, from the main sewer in Vandeventer avenue westwardly and southwardly to a point about 290 feet west of Vandeventer avenue. Second, a sewer fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewer in city block number 4584 above described westwardly about 250 feet. Third, sewers twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewer last described westwardly about 400 feet; also from the eighteen-inch pipe sewer in Sarah street above described eastwardly in the east and west alley in city block number 4584, about 450 feet, and in Sarah street from the eighteen-inch pipe sewer above described southwardly to Olive street.

SEC. 16. Sewers shall be built in the east and west alleys in city blocks number 3752, 3753 and 3754, and in the north and south alley in city block number 3754, as follows: First, sewers fifteen inches in diameter, made of vitrified clay pipe, from the six-feet-six-inch brick sewer in Morgan street northwardly in the north and south alley in city block number 3754 to the east and west alley in said city block number 3754, and westwardly in said east and west alley to a point about 400 feet west of Vandeventer avenue in the east and west alley in city block number 3752, from the main sewer in Vandeventer avenue westwardly about 360 feet; and from the main sewer in Sarah street eastwardly about 280 feet; in the east and west alley in city block number 3753, from the main sewer in Vandeventer avenue westwardly about 394 feet; and from the main sewer in Sarah street eastwardly about 290 feet and in the east and west alley in city block number 3754, north of the St. Louis Cable and Western railway from the main sewer in Sarah street eastwardly about 280 feet. Second, sewers twelve inches in diameter made of vitrified clay pipe, from the fifteen-inch pipe sewers in city block number 3752 westwardly about 530 feet, and eastwardly
86 about 300 feet, from the fifteen-inch pipe sewers in city block number 3753 westwardly about 500 feet and eastwardly about 300 feet; and eastwardly in the alley in city block number 3754, north of the St. Louis Cable and Western railway, about 500 feet

from the fifteen-inch pipe sewer above described; and in the east and west alley in the eastern part of said block, from the fifteen-inch pipe sewer first above described westwardly about 265 feet.

SEC. 17. Sewers shall be built in the east and west alley in city block number 4565, in Fairfax avenue and in Finney avenue, as follows: First, sewers fifteen inches in diameter made of vitrified clay pipe, in the east and west alley in city block number 4565, westwardly from the main sewer in Vandeventer avenue about 235 feet; and eastwardly from the main sewer in Sarah street about 275 feet. Second, sewers, twelve inches in diameter, made of vitrified clay pipe, in said alley, in city block number 4565, from the fifteen-inch pipe sewers above described, westwardly about 525 feet, and eastwardly about 450 feet, in Fairfax avenue westwardly from the main sewer in Vandeventer avenue about 700 feet, and eastwardly from the main sewer in Sarah street about 750 feet; and in Finney avenue from the main sewer in Sarah street eastwardly about 680 feet.

SEC. 18. Sewers shall be built in the north and south and east and west alleys in city block number 3742; in the north and south alley in city block number 3740; in the east and west alley in city block number 3741; in Finney avenue, in Cook avenue and in Page avenue as follows: First, a sewer two feet and six inches in mean diameter, made of brick laid in hydraulic cement mortar, from the main sewer in Sarah street eastwardly in the east and west alley in city block number 3741 about 220 feet. Second, sewers eighteen inches in diameter, made of vitrified clay pipe, from the brick sewer last described eastwardly about 400 feet and from the main sewer in Vandeventer avenue westwardly in Finney avenue to the north and south alley in city block number 3742, and northwardly in said alley to the east and west alleys in said block. Third, sewers fifteen inches in diameter, made of vitrified clay pipe, from the
87 eighteen-inch pipe sewer in city block number 3742 last described northwardly to Cook avenue, from the main sewer in Sarah street eastwardly in the east and west alley in city block number 3742 about 325 feet; and from the eighteen-inch pipe sewer in city block number 3741, eastwardly about 320 feet; fourth, sewers twelve inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewer in city block number 3742 above described westwardly about 520 feet, from the fifteen-inch pipe sewer in the east and west alley in said block, eastwardly about 485 feet; from the fifteen-inch pipe sewer at Cook avenue above described, northwardly in the north and south alley in city block number 3740 to Page avenue, and westwardly in Page avenue to Jones avenue; also westwardly in Cook avenue from said fifteen-inch pipe sewer about 400 feet, in Finney avenue from the eighteen-inch sewer above described, westwardly to a suitable connection with the twelve-inch pipe sewer in said avenue laid by C. M. Newcomb and others, under permit number 16577, and in Page avenue from the main sewer in Sarah street eastwardly about 400 feet.

SEC. 19. Sewers shall be built in the east and west alley in city block number 3733 and in the alleys in city block number 3732, and in Evans avenue, as follows: First, sewers two feet and six

inches in mean diameter, made of brick laid in hydraulic cement mortar, from the main sewer in Sarah street eastwardly in the east and west alley in city block number 3733, about 200 feet; and in the east and west and western north and south alley in city block number 3732 from the main sewer in Sarah street to the southern east and west alley in said block. Second, sewers eighteen inches in diameter, made of vitrified clay pipe, from the brick sewer in city block number 3733, above described, eastwardly about 300 feet, and from the brick sewer in city block number 3732, eastwardly about 220 feet. Third, sewers fifteen inches in diameter, made of vitrified clay pipe, from the eighteen-inch pipe sewer in city block number 3733, above described, eastwardly about 225 feet, and westwardly in said block from the main sewer in Vandeventer
88 avenue about 240 feet; from the eighteen-inch pipe sewer in city block number 3732, above described, eastwardly about 200 feet, and westwardly in said city block number 3732, from the main sewer in Vandeventer avenue to the southern east and west alley in said block. Fourth, sewers twelve inches in diameter, made of vitrified clay pipe, from the fifteen-inch pipe sewers in city block number 3733, above described, eastwardly about 275 feet and westwardly about 245 feet; from the fifteen-inch pipe sewers in city block number 3732, above described, eastwardly about 300 feet and westwardly about 400 feet, and in Evans avenue, from the main sewer in Sarah street eastwardly about 400 feet.

WILLIAM WISE, sworn on behalf of the defendants, testified as follows:

Direct examination.

By Mr. GROVER:

Q. Your name, sir?

A. William Wise.

Q. Your occupation?

A. Assistant sewer commissioner.

Q. For how long a period?

A. Off and on for the last time about sixteen years.

Q. Did you hold your office during the time at which the Vandeventer sewer was constructed with its laterals and inlets in Vandeventer Avenue sewer district No. 1, referred to in plaintiff's petition?

A. Yes, sir.

Q. I will ask you if you had occasion to know anything about the construction of that sewer?

A. Yes, sir, of course; being in that position, I looked after it.

Q. The construction of it was under your supervision?

A. Yes, sir; under the sewer commissioner.

Q. Will you tell the court what is meant by "inlets" as referred to in that record which Mr. Foster read here—283 inlets?

A. There were inlets made at the intersection of the streets and other places where the water is directed into the sewer;
89 the water running on the street and street gutters are caught by the sewer inlets and carried to the sewer.

Q. Now, would you call it an inlet where one of these alley sewers came down from an alley and connected with the main sewer?

A. We would not call it an inlet: we would call it a branch sewer—branch or lateral sewer.

Q. Now, Mr. Wise, can you tell from memory how large was the first one of these lateral sewers coming into that Vandeventer Avenue sewer from the east?

Counsel for plaintiff objected on grounds already stated.

The court overruled the objection.

A. You mean the first lateral sewer?

Q. Brick sewer?

A. The first lateral sewer north of the beginning of the sewer?

Q. Yes.

A. That was on the first alley, of course, that we encountered—I think it was a two by three brick sewer.

Q. What was the diameter of that sewer?

A. Two by three.

Q. Now, what was the average length, running east, of those lateral brick sewers called for by the ordinances and contract in this case?

Counsel for plaintiff objected on the ground that the ordinances are the best evidence.

A. I have no memorandum of the length of each of these sewers, but the sewers running eastwardly from Vandeventer run to about the boundary line of the district and that district is defined by the ordinances.

Q. Do you know what the boundary line was?

A. Yes, sir; I know approximately. I don't know the exact distance east of Vandeventer; perhaps it was at the beginning, near Duncan avenue; it was not very far—only a couple of hundred feet—two or three hundred feet or a block or two.

90 Q. Was it Pine or Olive street?

A. Pine street runs east to the top of the hill near Grand avenue, about three hundred feet from Grand.

Q. What would be approximately the distance from the beginning of the laterals near Grand avenue to the western terminus of them at Vandeventer?

A. At Pine street?

Q. Pine and Olive and Washington and all along.

A. It would be upwards of 2,000 feet, something like that.

Q. Fully that?

A. Yes, sir.

Q. Now, Mr. Wise, what approximately would be the length of the lateral brick sewers which come into the Vandeventer Avenue sewer from the west?

A. At what place?

Q. Say at Pine, Olive, Washington—along there?

A. At Pine there was none on the west.

Q. Was there at Chestnut?

A. There is no Chestnut there.

Q. How about Olive?

A. At Olive there was none.

Q. Where was the first brick sewer coming in from the west?

A. I think it was on the alley north of Olive street.

Q. What was the length of that?

A. As near as I can tell about 1,500 feet.

Q. And was it run with different dimensions, you have given some of those—of the extreme length and——

A. (Interrupting.) Well, the last I mentioned was not all brick sewer; I believe it commenced with a brick sewer, but tapered off to a pipe as we reached the summit.

Q. How far approximately did it run as a brick sewer?

A. Perhaps one-third of the way, and the balance was of pipe of different dimensions.

91 Q. Now north on Vandeventer up to Morgan, what was the length of those lateral sewers running in from the east—what was the average length?

A. They all run up to a point near Grand avenue; they were not all alike; the line along the eastern boundary was not parallel to Grand avenue altogether; some places it was at Grand avenue, and other places as much as three hundred feet west, and the district sewers from Vande-ter up, ended at that boundary line.

Q. Where it ran from Grand avenue down there what would you say was the distance down to Vandeventer?

A. As near as I can guess about half a mile.

Q. Where it went three hundred feet west it would be three hundred feet less than half a mile?

A. I just guess; I don't know.

Q. Well, it is over 2,000 feet from Grand avenue to Vandeventer avenue?

A. I should say so; the first block is a thousand feet, and the next is about the same.

Q. Now these lateral sewers, as you have described them, were made to connect with the Vandeventer Avenue sewer and carry off the sewerage of those different territories and carry it into the Vandeventer Avenue sewer—the sewerage from these laterals?

A. They centered into the Vandeventer Avenue sewer.

Q. And also likewise from the west?

A. Yes, sir.

Q. Then the run was straight down to the Mill Creek sewer?

A. Yes, sir.

Q. Through this Vandeventer Avenue sewer?

A. Yes, sir.

Q. Now, what was the Mill Creek sewer—a public or district sewer?

Counsel for plaintiff objected on the ground that it does not appear that witness knows.

Q. Do you know whether the Mill Creek sewer is a public or district sewer?

A. I do.

Counsel for plaintiff withdrew the objection.

Q. What is it?
A. A public sewer.

92 The COURT: What made it so?

(By Mr. GROVER:)

Q. What made it so?

Counsel for plaintiff objected.

Mr. GROVER: I can ask what the size of the Mill Creek sewer was.
The COURT: I don't care for that.

(By Mr. GROVER:)

Q. Now, Mr. Wise, what is the size of the Mill Creek sewer at the point of its connection with the Vandeventer Avenue sewer?

Counsel for plaintiff objected.
The court overruled the objection.

A. 14 feet wide and 12 feet high.
Q. What would you say was the diameter?
A. Fourteen by twelve.
Q. I want to know which was the twelve feet and which the fourteen feet.
A. I said fourteen feet wide and twelve feet high.
Q. Now, Mr. Wise, can you state what was the object in carrying this Vandeventer Avenue sewer west on Morgan to Sarah street and then north on Sarah?

Mr. ROGERS: I object as incompetent—stating what the object of the board of public improvement was.
Counsel for defendant withdrew the question.

(By Mr. GROVER:)

Q. Mr. Wise, was there an elevation of land on Morgan street, between Vandeventer avenue and Sarah street?
A. Yes, sir.
Q. Then at Sarah street the land was lower than it was at a point between Vandeventer and Sarah street—there was a depression?
A. There was quite a hill between Sarah and Vandeventer.
Q. And there was on the other side of the hill another drainage system until you cut through with the sewer?

Counsel for plaintiff objected.

Q. How far west of Sarah street was the western line of the district at that time?

93 A. It was at Sarah street; Sarah street was the western boundary at that point, but it widened out north of that further west.

Q. I say, then, on the other side of this elevation that you had to

cut through as you carried this sewer west on Morgan street you tapped a low depression on that side which ran north?

A. Going through on Vandeventer from Morgan to Sarah we did not continue to the low ground to the west of that; the ravine or low ground was still further west; we went to Sarah street, which was on the side sloping westwardly which was a block further west — the lowest point.

Q. When you carried that sewer north on Sarah street to St. Ferdinand street didn't you come to the head of the drainage system which went down that depression just west of Sarah street—didn't you tap it?

A. Yes, sir.

Q. You tapped that at St. Ferdinand?

A. No, sir; not at St. Ferdinand; St. Ferdinand was at the summit—at the head of the watershed of that district.

Q. Where did you tap that natural drainage system north of Sarah?

A. We tapped it at Morgan and Sarah; when we crossed on Morgan we tapped it at Sarah.

Q. When you extended that sewer north on Sarah, you drew the drainage from St. Ferdinand street and that territory down through that sewer?

A. Yes, sir.

The COURT: The witness has spoken of a depression west of Sarah at Morgan which was not in the district.

Mr. GROVER: No, he said it was in the district—the west line of Sarah was—but the sewer went north on Sarah.

(By the COURT:)

Q. Was sewage taken from the west of Sarah into this sewer?

A. Let me explain. Sarah street was the west boundary at Morgan, and the depression was still farther west. That was tapped by another sewer running into the Mill Creek sewer from the
94 west, and this sewer on Sarah street did not drain that fall at all. The sewer going north on Sarah street drained quite a different section; the sewer crossing Morgan street west of Sarah was not tapped by this sewer.

(By Mr. GROVER:)

Q. Still the sewer ran north on Sarah to St. Ferdinand and drained all that territory up there. I will ask you if that was not the fact?

Mr. ROGERS: I object to that question as being indefinite; it don't state which sewer.

(By Mr. GROVER:)

Q. I say the Vandeventer Avenue sewer which ran north to St. Ferdinand, north on Sarah?

A. It did not do that.

Q. What did you put it there for?

Counsel for plaintiff objected.

Q. Well, begin at the beginning. Mr. Wise, from Morgan street on Sarah, how far north on Sarah did the Vandeventer Avenue sewer run?

A. To Lucky street.

Q. How far was that?

A. One block north of Easton avenue.

Q. What was the distance from Morgan street?

A. A little over half a mile.

Q. Now, when it got to Lucky street, where did it run to?

A. West to Whittier.

Q. How far was that along Lucky?

A. Perhaps seven or eight hundred feet.

Q. Now, what became of it when it got to Whittier?

A. Then it ran to St. Ferdinand.

Q. What was the distance there from Whittier to St. Ferdinand?

A. A quarter of a mile, perhaps, or 1,200 feet.

Q. Then it did drain a certain territory on the west of the elevation, which you have stated rose between Vandeventer and Sarah on Morgan. There was an elevation there between those two
95 streets; now, it did drain a portion of that territory on the west side of that elevation?

A. On the west side of which elevation?

Q. The elevation which you say rose on Morgan between Vandeventer and Sarah?

A. That elevation was dwindled out to nothing; but there was an elevation west of Sarah street, commencing a block or two north of Morgan street, and the sewer on Sarah street reached off to that elevation.

Q. And went west of it?

A. West of Sarah to the elevation west of Sarah. But the depression on Morgan street crossing Sarah was beyond that elevation; that was another fall.

Q. Now, was there any drainage from the west into this Vandeventer Avenue sewer after it left Morgan street and proceeded north on Sarah?

Mr. Rogers: I object to that as immaterial. It has not been shown what the boundary was, especially at the point north of Morgan street.

The Court: It is in the record somewhere—the boundaries.

Q. (Repeated.)

A. Yes, sir; there was.

Q. Was that drainage by means of lateral sewers?

A. Yes, sir.

Q. Coming in from the west?

A. From the east and the west into the Vandeventer Avenue sewer.

Q. From both sides?

A. Yes, sir.

(By the COURT:)

Q. You are talking about Sarah street now?
A. Vandeventer north of Morgan.

(By Mr. GROVER:)

Q. The drainage from the west into this Vandeventer Avenue sewer after it left Morgan and went north on Sarah?
The COURT: Which are you talking about now?
WITNESS: Why, I understood I was explaining Vandeventer before in both cases—Vandeventer; it drained into Vandeventer sewer from the east and west, and inter Sarah street from the east and west.

96 (By Mr. GROVER:)

Q. And also along the line when it went to Lucky, and from Lucky to Whittier the drainage on both sides, from the east and the west, went into this Vandeventer Avenue sewer?
A. Yes, sir; into this sewer at that place. It was not on Vandeventer avenue.
Q. I understand—the main stem of it?
A. Yes, sir.

Cross-examination by Mr. ROGERS:

Q. Mr. Wise, this Vandeventer Avenue sewer did not drain any territory west of Sarah street and south of Morgan street, did it?
A. No, sir.
Q. Now, if it drained any territory west of Sarah street, at what point was that with reference to Morgan street? Take the part that goes north on Sarah street. Now where did the first lateral come in from the west?
A. I think it was about a block north of Morgan street.
Q. Now, all these laterals which you referred to here in your testimony were within Vandeventer Avenue sewer district No. 1, were they not?
A. Yes, sir.
Q. Now, on the west of Sarah street, say at Morgan, there was a public sewer, was there not?
A. No, sir.
Q. I show you here a drawing, Mr. Wise, and see if you recognize it as being a tracing. (Handing witness a tracing.) Does that tracing show the situation of the territory represented here in regard to the Vandeventer Avenue sewer?

Mr. GROVER: What do you mean by "represented here"?
Mr. ROGERS: In the drawing.

A. Do you mean the surveys, the sewers or what?
Q. Does this properly show the course of the Vandeventer Avenue sewer from, say, Duncan avenue as far north as this tracing shows?

Mr. GROVER: Name the street.

(By Mr. ROGERS:)

97 Q. Fairfax avenue—is that as far as it goes?
A. Yes, sir; it is correct as far as it goes.
Q. West of Vandeventer avenue, say at Lindell boulevard—west of Vandeventer avenue there was a public sewer, was there not, as represented by this red line on this tracing?
A. Yes, sir.

(By Mr. GROVER:)

Q. You say there was? When was it built?
A. They were building it at that intersection there when we were building the Vandeventer Avenue sewer and it was built in sections up to where it crossed the creek here (pointing on tracing) and extended up.

(By the COURT:)

Q. What sewer is that?
A. The Mill Creek sewer.

(By Mr. ROGERS:)

Q. Represented by that bright red line there on the tracing?
A. Yes, sir.
Q. Then this pale red line represents the Vandeventer Avenue sewer?
A. Yes, sir.
Q. Now look at the figures on this tracing, Mr. Wise, and see if——
The COURT, interrupting: What do you mean by speaking of the Taylor Avenue red line?
Mr. ROGERS: I mean Vandeventer avenue. I said Taylor.
Q. I will ask you if you recognize this as being a tracing of the topographical map in the office of the sewer commissioner of the city of St. Louis?
A. Of course, after going into the details I know from the general appearance that it is about the appearance of the original topography of the ground.
Q. You don't mean Mr. Wise that this Vandeventer sewer had some low places west of Sarah street that were outside of the boundaries of the Vandeventer Avenue sewer district?
A. That it tapped some low places?
Q. Yes, sir; outside of the district boundaries.
A. No; not outside of the district.
98 Q. Then all these low places that you spoke of as being tapped by the Vandeventer Avenue sewer were within the Vandeventer Avenue sewer district No. 1?
A. Yes, sir.
Q. Now, going north on Vandeventer avenue from Duncan avenue, along the line of this Vandeventer sewer, the sewer had to pass a considerable rise in the ground, did it not?
A. Yes, sir; there was quite a hill along between Duncan avenue

and Olive street, or between Duncan avenue and Lindell avenue the highest point being about Pine street, and a pretty deep cut there through a rock excavation.

Q. What kind of a sewer was this Vandeventer sewer, Mr. Wise?

By Mr. GROVER: I object. What do you mean by "what kind of a sewer"?

The COURT: That question does not ask for anything.

Q. Does this Vandeventer Avenue sewer receive the drainage from any territory outside of the boundaries of the district as defined by the ordinances?

A. When it was first constructed it drained nothing outside.

By Mr. GROVER:

Q. Does it drain anything outside of the district as originally constructed now?

A. I think it does, some little.

Q. Is that drainage brought in by sewers constructed to connect with it?

A. Yes, sir.

(By Mr. ROGERS:)

Q. Now, Mr. Wise, didn't water from outside the district run through this sewer and go through the manholes—surface water?

Counsel for the defendant object as immaterial.

The court overruled the objection.

A. I must answer in the negative; there was no water drained into the Vandeventer Avenue sewer from outside the district. The fall which drained the water ran into the sewer at the junction of the Mill Creek sewer.

99 Q. Are you sure now and can state definitely and positively that no water in case of a flood or rain would run over the surface and come into the manholes of this Vandeventer sewer at any point?

Counsel for defendant objected as immaterial.

The court overruled the objection.

A. I must answer that this is not the case; there is a fall west of Vandeventer which takes that drainage and carries it off to Mill creek without going to Vandeventer, so that there is no surface drainage comes into the Vandeventer.

Q. Is the western boundary of this sewer district as fixed by ordinance at the top of elevation—west of it—so that no water could possibly run down the hill or incline west of it—surface water—and get into the manholes of the Vandeventer sewer—can you state that definitely and positively?

A. The surface drainage as I stated before, is in the district west of Vandeventer as far as Washington, and that is carried into Mill creek west of Vandeventer. Now, when you get as far as Morgan and drain each way into Sarah street and Vandeventer, the district

line is about on the limit of drainage on the west so that there is no run—the water comes across from the outside of the district into the district.

Q. Is that true, all along that sewer from Morgan up to Lucky, then west to Whittier, and then to St. Ferdinand—is that true, that this sewer is right on the line of drainage all the way?

A. The district line is the street line; it follows streets, and sometimes it may be a short distance east or west of that, but it is at the summit of that watershed.

(By the COURT:)

Q. Do I understand from you that there is a double system of sewers?

A. There is a double system north of Morgan.

100 Q. I mean one system for the surface and another for the house sewage?

A. No, sir.

Q. I thought you spoke of a sewer west of Vandeventer which carried the water down to the Mill creek?

A. Not a sewer, but the natural fall between Sarah and Vandeventer.

Q. Whereabouts is that?

A. It commences at Duncan avenue and Forest Park boulevard and crosses Pine street. You will also find a low place on Lindell avenue.

Q. Is there water running through there now?

A. There is a sewer there now; it is cut by the sewer.

Q. You mean this sewer?

A. No, not Pine street; it comes into Mill creek on Sarah street.

Q. Does this present Vandeventer Avenue sewer we are now talking about carry all the surface water in district No. 1?

A. Yes, sir; the Vandeventer carries the whole district.

Q. Then this low place you are speaking of in the west is not in the district?

A. No, sir.

(By Mr. GROVER:)

Q. I want to ask you about this district. Have you made an estimate of the area in acres of that Vandeventer Avenue sewer district No. 1?

A. Yes, sir.

Q. What is the area in acres?

A. About 525 acres.

Q. Does this drawing, which has been shown you in your cross-examination by Mr. Rogers, properly represent the lateral sewers in the territory covered by this drawing?

A. I don't see any lateral sewers drawn at all on that; where are they?

Q. I am asking you?

A. I don't see any. There were lateral sewers on all the alleys here and some of the streets, but not on here (referring to tracing).

Q. Then this drawing is not correct?

A. This one shows the main sewer, not the laterals.

101 Q. Then it is not a correct plat?

A. It don't embrace all the district.

Q. It don't show the lateral sewers in the district which it does purport to cover?

A. It don't show any lateral sewers.

Q. Then it don't show any lateral sewers?

A. No, sir.

ROBERT E. MCMATH, sworn on behalf of the defendants, testified as follows:

Direct examination by Mr. GROVER:

Q. Your name, sir?

A. Robert E. McMath.

Q. Your official connection with the city?

A. President of the board of public improvements.

Q. What was your connection with the city at the time the Vandeventer Avenue sewer was projected and constructed?

A. Sewer commissioner.

Q. I will ask you, Mr. McMath, if you, as sewer commissioner, at any time, made any examination to see whether or not the general public would be benefited by the construction of this sewer?

Counsel for plaintiff objected.

The court sustained the objection.

To which action and ruling of the court, defendant, by counsel, then and there duly excepted.

Q. Did the board of public improvements make any investigation or reach any conclusion as to whether or not the general public of the city of St. Louis would receive any benefit from the construction of that sewer?

Counsel for plaintiff objected.

The COURT: We have in evidence all the records of the board. The board, I suppose, speaks only through its record. We will confine the evidence to what the board did. I sustain the objection. That is to say, I don't object to any record, you can show any

102 official action of the board, but any action outside of the official record cannot be shown.

To which action and ruling of the court, defendant, by counsel, then and there duly excepted.

Cross-examination by Mr. ROGERS:

Q. Mr. McMath, was this Vandeventer Avenue sewer district No. 1 established in response to a petition from the property-holders in that district, asking for the sewer?

Counsel for defendant object as irrelevant, immaterial and incompetent.

The COURT: If that is a part of the record, it is competent.

(By Mr. ROGERS:)

Q. Does your recollection enable you to say whether the record shows that a petition was filed signed by the property-holders—there was a very large petition, was there not?

A. Yes, sir.

Counsel for defendant objected to the question, and asked that the answer be stricken out. The court sustained the objection, and the motion to strike out answer.

Q. Mr. McMath, how long have you been in the board of public improvements in the city of St. Louis?

A. Since 1883, excepting two years.

Q. You were, I believe, prior to that a civil engineer?

A. Yes, sir.

Q. And your business and your learning make you familiar with matters of sewerage and drainage?

A. It has been my business for over forty years.

Q. You know something, I suppose, about the values of real estate in the city of St. Louis, by reason of your connection with public improvements?

A. Yes, sir; I have a general idea.

Q. I will ask you to state if, in your opinion, the property
103 in the district known as "Vandeventer Avenue sewer district No. 1," was benefited by reason of the putting in of that sewer?

Mr. GROVER: I object; he has not shown that he is competent to show the value, and it is not the proper way to show it; he is asking for a conclusion.

The COURT: What has that question to do with the case, anyway; I sustain the objection.

(By Mr. ROGERS:)

Q. I believe that you were sewer commissioner at the time when this "Vandeventer Avenue sewer district No. 1" was established, were you not?

A. I was.

Q. You had something to do with superintending the construction of that sewer, and you know the sewer of your own knowledge by reason of your connection with it, do you not?

A. Yes, sir; I do.

Q. You drew the plans and profiles, did you, for that sewer district?

A. I laid out the plans.

Q. I will call your attention, Mr. McMath, to the figures contained in the special-tax bill giving the area of square feet as 16,706,365, and ask you if you know about how many acres that would be, or what the acreage of this sewer district was?

A. Sixteen million odd square feet of property.

Q. In addition to that, there were streets and alleys within this sewer district, in addition to this sixteen million odd square feet?

A. That would amount to probably four hundred acres of private property.

Q. State if you know about how many acres there were in Vandeventer Avenue sewer district No. 1, including both the streets and alleys and the private property within the district?

A. You get the acreage of the property by dividing by 43,560; the entire district including the surface of the streets and alleys is about 525 acres.

Q. Do you know the size of the different parts of this Vandeventer sewer district No. 1; I mean this main stem or trunk
104 and the laterals?

A. I could not speak of them by memory of my own; they are matters of record.

Q. Suppose this Vandeventer Avenue sewer is eight and a half feet in diameter at the point where it enters the Mill Creek sewer at Duncan avenue; would you say, as an engineer, that the main stem was too large for the purpose of draining 525 acres of ground?

Counsel for defendant objected.

The court overruled the objection.

To which action and ruling of the court defendant by counsel then and there duly excepted.

A. I proportioned it to make it just capable of carrying the drainage of 525 acres.

Q. Do you think that the proportion of eight and a half feet in diameter at that point is the proper proportion for a sewer capable of draining 525 acres?

A. I did, and do still.

Q. Those are according to the figures you made?

A. According to the computation made at the time to drain that area in the city of St. Louis.

Q. Mr. McMath, was the sewer (main trunk, laterals and all that) in Vandeventer Avenue sewer district No. 1, for that district alone?

Counsel for defendant objected as leading.

The COURT: The inquiry is proper, but the question is leading.

(By Mr. ROGERS:)

Q. You are familiar, I believe, with the work as to Vandeventer Avenue sewer, are you not?

A. I am.

Q. Well, what does your experience lead you to conclude concerning the proper proportions of that Vandeventer Avenue sewer, with reference to the area contained in it?

The COURT: He has answered that question squarely twice.

105 (By Mr. ROGERS:)

Q. Does that Vandeventer Avenue sewer, Mr. McMath, drain any territory outside of the boundaries of the district, as established by ordinance?

A. I think it does a few acres at the southern end of it, but a very few.

Q. About how many acres, Mr. McMath?

A. Perhaps twenty-five.

Q. Well, you say you simply think it does. Are you certain about that—have you any way of showing how many acres are drained there?

A. Well, I think from the south of Laclede avenue to the next street south, extending from the eastern boundary of the sewer district up to the summit 600 feet or so west of Grand avenue, that there has been a sewer built which brings in the drainage of a territory which is not in the sewer district, and I assume it took in, at the extreme, about twenty-five acres; I don't know precisely.

(By the COURT:)

Q. When the sewer was planned was it designed to take in these twenty-five acres?

A. This twenty-five acres lies immediately east; that could be taken in another direction; it would make no difference in the size of the sewer, whether it was laid down Cabanne avenue; I think, as a matter of convenience, it has been laid down to the Vandeventer sewer; simply because the property has not developed, that they have not built the sewer on Cabanne avenue.

(By Mr. ROGERS:)

Q. Did that small territory that was let into the Vandeventer Avenue sewer, or the provision made for it, increase the cost of the Vandeventer Avenue sewer district No. 1?

(By the COURT:)

Q. I asked whether, in planning and laying out this sewer, you designed it to carry this space you have spoken of.

A. Not especially; a sewer of that size is designed to carry a little margin, and this would be a very little margin; as I said, this was a piece of ground that could have been drained in other direc-
106 tions, if streets had been opened, and it had been designed to build a sewer on Cabanne, and it was run along Laclede and let into the Vandeventer Avenue sewer; it enters the eight and a half foot sewer, and its entrance there would not be felt, and a unit of twenty-five acres out of 525 would not make any difference in the estimated capacity of the sewer.

(By Mr. ROGERS:)

Q. Then the drainage of that small territory outside of the district has not added to the cost of the district, as a matter of fact?

A. It cut no figure in the original plan.

Counsel for defendant objected to the question and moved to strike out answer.

The court sustained the objection and motion.

Q. I will ask you to look at this plat and see if you can from it

explain the topography of the ground within the territory represented by this map (handing witness plat, same plat hereinbefore referred to)?

A. That plat don't show more than about a fourth or third of the Vandeventer Avenue sewer district No. 1, and it is not calculated to give any definite reliable information; it is nothing but confusion in using an imperfect plat.

Q. You mean as to explaining the topography of the whole district?

A. At the time that sewer was planned and constructed.

(By the COURT:)

Q. Were you familiar with the topography of this district before the sewer was built?

A. Yes, sir.

Q. What was the general lay of the land as to there being a system of drainage there?

A. If I had a general plan that would show that whole country I could show it in a very short while, but this shows nothing.

(By Mr. ROGERS:)

Q. Suppose this is Vandeventer avenue (pointing on said plan), and this Duncan avenue (pointing on another place on plan),
107 where do you get the territory on either side of Vandeventer avenue?

The COURT: I am asking a general question: I would like to know whether there was a drainage system through there and what was the character of it; it may be necessary for the court to determine the case of whether the charter calls for that; I don't know how that question can be determined unless by per cent.

WITNESS: I could use this plat so far as it goes.

The COURT: Answer the question any way you please.

WITNESS: I think the court is pretty well acquainted with the country. The Mill Creek north branch, as it is called, enters this district at the intersection of Duncan avenue and Vandeventer avenue; here is the line of that creek (indicating on plan). A little north of Pine street that natural water-course divided: one branch ran up northwardly and eastwardly and came to Vandeventer avenue at Washington; the other ran westwardly, crossing Sarah street a little south of Delmar boulevard, and crossed Lindell boulevard and proceeding diagonally across the country, crossing Maryland and McPherson avenues, following pretty closely along the line of Whittier street until it got to Fairfax, then it meandered off northwestwardly.

Q. What was the course of the water when it ran through that? Was it towards the Mill Creek sewer, running in that direction? These two branches came together and ran in a southerly direction?

A. After they united they formed what was considered the north branch of Mill creek. Now I think you will get an idea of the situation a little better if you will consider where these summits run;

between different courses of drainage. Suppose the fingers of my hands are the highest points and between the fingers the depressions, now then, one of the fingers in this case would come up in
108 a northeastwardly direction coming to Washington avenue to Vandeventer, it continued pretty closely following the line of Vandeventer avenue up as far as Page; west of Vandeventer there was a rise of ground between Vandeventer and Sarah, commencing immediately north of Lindell; crossing McPherson at Westminster and then after getting beyond Morgan street, it gradually fell down and became less prominent; then there was from the westward a trunk of this drainage system which I spoke of; on Whittier street there was one of these branches that ran up northeastwardly and crossed Sarah at Morgan. When this district was laid out, the effort was to meet this sanitary necessity, and it was so laid out as to include every possible inhabited dwelling-house there was in that section; in fact, there was not a half dozen outside of it. So that in laying out this system the sewers, especially to the west of Sarah—those laterals were extended beyond the divide, coming just as far as the depth of the sewer would afford a reasonable and sufficient drainage to the property; so that in some cases it ran 300 and 400 feet beyond the natural divide of the ridge; so that instead of any water being able to come from outside the district, this district reached over into the adjoining watershed. Now that is true throughout the whole extent of the western branch of this sewer which went out Morgan street and then as soon as it had gotten out of Morgan street it commenced to take in the territory from the west, (some of that territory extends beyond Whittier, I think nearly to Pendleton,) with a view of bringing in everything which possibly could be reached. That is the reason why the sewer was driven through this hill intervening between Sarah and Vandeventer on Morgan—in order to tap this supplementary drainage which was made necessary at that point. That enabled us
109 to bring into the boundaries of this district what had been known as "Elleardsville" or "Butchertown," as it is sometimes called. The western boundary of the district was the boundary lines of previously created districts, which, like this, had extended beyond the course.

Q. Take the line of the sewer from Duncan avenue north at Morgan north on Sarah—then on Lucky—then Whittier; how nearly, if at all, does it follow the natural drainage that existed before it was built?

A. The bringing of the drainage from Sarah street and all the territory which depends on that, over to Vandeventer was against nature, because nature had provided for it to go in a southwesterly direction; but that district was laid out with a view of including within the borders of the district all the territory which could be drained by the sewer on Vandeventer avenue.

Q. Was it intended to be used hereafter for other portions?

A. No, sir: it is not to be used for the benefit of any other territory than that contained in the district with the solitary exception, as I would speak of it, of two blocks; that was a block which lies

between Olive and Washington, Sarah and Vandeventer; and the block which I spoke of awhile ago south of Laclede between Laclede and Forest Park boulevard.

Q. Can you state whether any of the laterals emptying into the Vandeventer sewer are themselves tapped by lateral sewers?

A. No, sir; in no instance.

(By Mr. ROGERS:)

Q. About the part of the territory represented in this portion of the map. Now, you say the natural depression beginning at Duncan avenue and Vandeventer—I believe you ran your finger along in this direction (indicating on map)?

A. Yes, sir; it does not represent a continuous water-course, but here is the lowest point on the map at the intersection of Vandeventer and Duncan avenue-. The line of greatest depression
110 continues singly up to the crossing of Laclede avenue about midway between Vandeventer and Sarah; there it divided and ran—one branch parallel to Vandeventer avenue, nearly up to McPherson, and then it swung a little nearer to Vandeventer until it crossed Olive street, probably 300 feet or so west of Vandeventer and then diagonally across; so that at Washington avenue, and north there was originally a good place to hunt snipes.

(By the COURT:)

Q. Take the point between Vandeventer and Sarah and Duncan and Lindell; where was the western line of this district?

A. The western line of the district from Duncan avenue to Westminster was probably the west line of Vandeventer avenue.

Q. Where did all that drainage go to—where does it go to now?

A. Nearly all of it goes down to the sewer on Sarah street, necessarily.

Q. Starting with that last point you spoke of and then following up the water-course there you spoke of, does that water go into this sewer, or does it go to the Mill Creek sewer?

A. To the Mill Creek sewer; I think that whole part of this block has no sewer.

Q. That district has no sewer running into the Vandeventer Avenue sewer at all?

A. No, sir.

Q. The boundary is on the west line of Vandeventer avenue?

A. Yes, sir.

Q. I will ask you this question. Does this sewer, built on Vandeventer avenue and connecting at Duncan avenue, carry the drainage which originally went through that water-course, and take the place of that water-course?

A. It carries some of it; that is, it carries what did reach that water-course.

(By Mr. GROVER:)

Q. You say it carries that which went to a certain point; that is the point we want.

(By the COURT:)

Q. I will ask this question: What portion of the original drainage which went over the natural surface through the depressions
111 of which you have been speaking, is now carried by the Vandeventer sewer, if any?

A. A considerable less than one-half, possibly one-third; I make that statement on the per cent. of the areas.

(By Mr. ROGERS:)

Q. I will ask you about this depression on Laclede avenue you say was and is, west of Vandeventer avenue. I will ask you to state approximately how far west of Vandeventer avenue the lowest point of that depression is at Laclede avenue—how far west of Vandeventer avenue is that?

A. I think it is about six hundred feet.

Q. Then that old run or natural course of drainage was at Laclede avenue, about six hundred feet west of Vandeventer?

A. I think it is a little over 600 feet, 200 feet is an inch. That is about 700 feet there.

(By Mr. GROVER:)

Q. You stated in answer to a question by his honor that it would be impossible to get into this drainage district now, any drainage from the outside.

A. I said very nearly that.

Q. Now, would it not be possible to get some drainage into this district, as you said in regard to that drainage beyond Sarah street, against nature?

A. No, we exhausted the "against nature" possibilities at that time.

Q. You could not dig a ditch anywhere deep enough to get the drainage outside of this district?

Counsel for plaintiff objected.

The court overruled the objection.

A. It cannot be done.

Q. Then the "against nature" process could not be repeated in this way?

A. No, sir.

Q. Now did you ever see that Vandeventer Avenue sewer full of water at any time?

A. It is hard to answer that question; literally I did not.

Q. I am asking for it literally?

A. I have known it to be full by good and *and* sufficient evidence; I cannot say that I ever saw it.

112 Q. I ask if you ever saw it full of water?

A. No, sir.

Q. Did you ever take the trouble to examine that sewer after a flood—go out and look at it? I don't mean reports, but did you ever go and look at it after a hard rain?

A. I have been along the course of it after a hard rain.

Q. Have you looked into to see how high the water was in it?

A. I don't know of any convenient way by which I could get down and see it.

Q. The question is, did you see it?

A. No, sir.

Defendant rested here.

This was all the evidence offered in the case.

Thereafter, on the 12th day of June, 1899, the court entered in said cause its findings, judgment, and decree in favor of the plaintiff and against defendant on plaintiff's cause of action; and against the defendant and in favor of plaintiff on defendant's cross-bills; which findings, judgment and decree is as follows, to wit:

(See page 22, *ante*, for judgments.)

To such findings, judgments and decrees defendants then and there duly excepted at the time in each case.

Thereafter, within four days from the rendition and entry of said findings, judgments and decrees, to wit, on the 16th day of June, 1899, and at the same term of the said court, the defendants filed in said causes motions for a rehearing and new trial and in arrest, which motions for rehearing and new trial and in arrest are as follows, to wit:

HEMAN
vs.
SHUMATE ET AL.

Motion for New Trial.

And now comes John L. Shumate, one of the defendants in the above-entitled cause, and moves the court to set aside the findings and judgment and decree entered herein, and to grant to this defendant a rehearing of all the issues of law and fact in this case; and for grounds of this motion alleges the following:

(1.) There is no evidence to sustain the findings, judgment and decree of the court.

(2.) The judgment, findings and decree are against the evidence, and against the weight of the evidence.

(3.) The findings, judgment and decree should have been against the plaintiff and in favor of defendants on plaintiff's cause of action.

(4.) The findings, judgment and decree should have been in favor of the defendants, and against the plaintiff on defendants' cause of action and cross-bill.

(5.) The court admitted against defendants' objection illegal evidence offered by the plaintiff.

(6.) The court rejected illegal evidence offered by the defendants.

113 (7.) It was error in the court to find and decree that the Vandeventer Avenue sewer constructed in Vandeventer Avenue sewer district No. 1, in the city of St. Louis, under the ordinances set out in plaintiff's petition and appearing in the evidence and under the contract set out in plaintiff's petition, was a district

sewer. The findings and decree of the court should have been that the said sewer was a public sewer, and that the cost of the construction thereof should have been paid by the city out of public funds, and could not legally be assessed and taxed against defendants, or against defendants' property described in plaintiff's petition.

(8.) It was error in the court to find and hold, upon the law and evidence in this case, that the public of the city of St. Louis, and the city of St. Louis itself, was not benefited by the construction of the said Vandeventer Avenue sewer; it appearing fully and exclusively from the evidence that the said sewer was projected and recommended by the board of public improvements, as a sanitary measure, necessary for the welfare of the whole people of the city of St. Louis, and that, in conformity with such recommendation of the board of public improvements, the municipal assembly, by the ordinances aforesaid, directed and authorized the construction of said sewer for the purpose for which it was recommended; it appearing further from evidence that 125 acres of the property of the city of St. Louis, or 125 acres of the public property of the city of St. Louis, was intended to be, and was actually drained by the said Vandeventer Avenue sewer, through which all the drainage and sewage from the said 125 acres of public property was carried off and conveyed into the Mill Creek sewer, the latter being a public sewer of the city of St. Louis.

(9.) It was error for the court not to hold that the pro-
114 visions of sections 18–21–22–24 and 25 of article VI of the charter of the city of St. Louis, and that ordinances 13076, 13482, 14625, and ordinances number 13596 and 14630, and the contract with the plaintiff made thereunder and set out in plaintiff's petition, and any assessment against defendants or their property for the cost of the construction of said sewer, were null, void and of no effect, for the reason that they are repugnant to and in contravention of the 14th amendment of the Constitution of the United States, and contrary to the provisions of sections 20 and 21 of article II of the constitution of the State of Missouri.

(10.) The court should have found and decreed, upon the facts and law in this case, that, as the general public of the city of St. Louis, and the city of St. Louis derived benefit from the construction and use of said sewer, the city, and the city alone, was liable for the value of the benefit inuring to the city and to the public of the city, by the construction and use of said sewer, and that the whole cost of the construction of said sewer, should not have been assessed against the property and property-holders in said district, including this defendant and his property.

(11.) The court should have found and decreed, upon the facts and law in this case, that this defendant and his property could not be made liable for any part of the cost of the construction of said sewer, beyond the actual benefit, if any, resulting to defendant's property from the construction of said sewer.

(12.) The court should have held that, by reason of the failure of the foregoing provisions of the charter of the city of St. Louis, and of the said ordinances of the city of St. Louis, to require and provide that there should be an ascertainment and determination of the

fact, whether or not the city and general public was benefited
115 by the construction of said sewer, said provisions of said charter and said ordinances were null and void.

(13.) The court, upon the evidence and law in this case, should have found and decreed that the said provisions of said charter and of said ordinances and any alleged assessment thereunder, compelling the property-holders in said district, including this defendant, through their property, to pay and bear the entire cost of the construction of said sewer, when the evidence showed that the city of St. Louis, and the general public of said city, were actually benefited by the construction and use of said sewer, necessarily results in depriving this defendant of his property without due process of law, and in the taking of defendant's said property for public use without just compensation, and in depriving this defendant of the equal protection of the laws, contrary to the provisions of the 14th amendment of the Constitution of the United States, and contrary to the provisions of sections 20 and 21 of the constitution of the State of Missouri.

(14.) It was error in the court to hold that the said Vandeventer Avenue sewer was not of larger dimensions than was necessary to carry off the drainage of the sewage of the district created by the said ordinance; the facts shown by the evidence being that the board of public improvements permitted the drainage and sewage of 25 acres of land not in the limits of said district as created to be carried into said sewer.

(15.) The additional property, to wit, the said 25 acres drained into said sewer, should have been taxed along with the property contained within the limits of said district, and the failure to do so constitutes unequal taxation against the property within the limits of said district, and deprives the defendant of the equal protection of the law.

(16.) Under the provisions of the said sections of the charter
116 of the city of St. Louis, and under the said ordinances, neither the defendant nor defendant's property could become liable for any part of the cost of the construction of said sewer until and unless the cost of the construction of said sewer shall have been assessed by the board of public improvements against said property. Such assessment is a fundamental requirement as a basis of liability or lien for the cost of such construction. Plaintiff's petition did not allege that the board of public improvements had made such assessment. Defendant's answer specifically denied that the board made such assessment. The records of the board of public improvements, produced in the evidence, and the testimony of the secretary of said board, Emory S. Foster, discloses the fact that the board of public improvements had never made any such assessment.

It was error in the court, in view of that situation, to decree and hold that the special-tax bill was *prima facie* evidence that an assessment had been made by the board of public improvements, when no such allegation was contained in the petition of the plaintiff. It was error in the court to hold that the said tax bill was *prima facie* evidence of such fact, and in that way hold that the tax bill was

prima facie evidence of an essential, material fact, which had not been alleged in plaintiff's petition.

(17.) The official acts of the board of public improvements of the city of St. Louis must appear on and from its own records. The records of said board, offered in evidence by the defendants, and testimony of Emory A. Foster, secretary of said board, discloses the fact that no assessment of the cost of the construction of said sewer was ever made by the said board against the property in said sewer district, and against defendants' said property, even if the
117 said tax bill could be held to be *prima facie* evidence of an assessment by the said board, when no such assessment is alleged in plaintiff's petition; such *prima facie* evidence was overcome and rebutted by the direct evidence, when no such assessment had ever been made; and the court *could* have found and decreed in the evidence that the board of public improvements had never made an assessment of the cost of the construction of said sewer against the said property.

HEMAN
vs.
SHUMATE.

Motion in Arrest.

And now comes the defendant, John L. Shumate, and moves the court to arrest the judgment entered in the above-entitled cause, and for grounds of this motion alleges the following:

(1.) Plaintiff's petition does not state a cause of action.

(2.) Plaintiff's petition does not allege that the board of public improvements ever made any assessment of the cost of the construction of the Vandeventer Avenue sewer, in Vandeventer Avenue sewer district No. 1, against the property-holders or their property, including this defendant's property, therein situated.

(3.) As neither defendants nor their said property could be made liable for any part of the cost of said construction without a legal assessment being made therefor by the said board, the failure to allege such assessment in plaintiff's petition is, in fact, the failure to allege *and* liability against defendants or their property, and the special-tax bill is not *prima facie* evidence of any necessary facts not alleged and set out in plaintiff's petition.

118 (4.) The allegation of such assessment by the board of public improvements, being a necessary and essential allegation to sustain any liability against defendants or their said property, and the petition containing no such allegation, the said special-tax bill was not *prima facie* evidence against defendants or their property that any such assessment was ever made.

Thereafter and at the same term of the court, to wit: on the 23rd day of June, 1899, the court overruled defendants' said motions for rehearing and for a new trial and in arrest; to which orders, judgments and decrees, overruling defendants' said motions for rehearing and for new trial, and in arrest, defendant- then and there duly excepted at the time.

Said orders, judgments, and decrees, overruling defendants' said motions for rehearing and for new trial, and in arrest, are as follows, to wit:

AUGUST HEMAN
vs.
JOHN L. SHUMATE.

It is hereby ordered by the court that the defendant's motion for a new trial and motion in arrest of judgment, heretofore filed herein, be and the same are hereby overruled.

Thereafter, on the 30th day of September, 1899, the said defendant prayed the court for an order extending the time for him to present and file his bill of exceptions in the above-entitled cause for the period of sixty days from said 30th day of September, 1899; and at the same time filed his affidavit for appeal from
119 said finding, judgment and decree to the supreme court of the State of Missouri. Thereupon the said court by its order and decree, extended the time for defendant to present and file his said bill of exceptions, sixty days from said 30th day of September, 1899, and entered orders and decrees granting to defendants appeal from said judgment, finding and decree to the *decree to the* supreme court of the State of Missouri.

Thereupon now, on this 29th day of November, 1899, and within the period of sixty days from said 30th day of September, 1899, the said defendants come and presents his bill of exceptions and ask that the same may be signed and sealed and made part of the record herein, which is done this 29th day of November, 1899.

FRANKLIN FERRIS, *Judge*. [SEAL.]

In the Circuit Court, City of St. Louis, State of Missouri.

AUGUST HEMAN, Plaintiff,
vs.
JOHN L. SHUMATE and HUNTINGTON SMITH, Defendants. } No. 84205. Division No. 6.

In the Circuit Court, City of St. Louis, State of Missouri.

AUGUST HEMAN, Plaintiff,
vs.
NATHAN D. ALLEN and HUNTINGTON SMITH, Defendants. } No. 84212. Division No. 6.

Stipulation.

It is hereby agreed and stipulated by and between the parties plaintiff and defendant in both the above-entitled causes, that, the above causes having been set for trial on the same day, in the same division of the circuit court of the city of St. Louis, and having by consent of parties been tried together, by which con-
120 sent and agreement it was further stipulated that the evidence taken by both parties at the trial, and the rulings on the evi-

dence, and the exceptions to such court rulings, might be, should be, for the purposes of said trial, considered as taken and made in both of said causes.

Now, therefore, the said parties now further stipulate and agree with each other that the above and foregoing bill of exceptions was intended to be, and shall be, filed in each of the above-entitled causes, and is, and shall be defendants' bill of exceptions in each and both of said causes, and shall constitute and shall be defendants' bill of exceptions in each and both of said cases for the purposes of defendants' appeals in the supreme court of Missouri; and may be considered by said supreme court as defendants' bill of exception- in each and both of said cases; and in making up transcripts of the records for the purposes of said appeal, for the supreme court of Missouri, if said appeal shall be taken to said supreme court on full certified transcripts from the said circuit court; or in making up of abstracts of the record, or in making up the printed record for the purposes of said appeal in said cases in said supreme court, under the rules thereof, if full certified transcripts shall not be filed in said supreme court, it shall not be necessary to copy or to make an abstract, or a printed record of said bill of exceptions twice, but only once; and the appeals in both of said cases may be submitted to said supreme court for hearing and decision, upon the above and foregoing bill of exceptions filed in both cases.

HICKMAN P. RODGERS,
Attorney for Plaintiff.
HIRAM J. GROVER,
Attorney for Defendants.

121 And on the same day the further following proceedings were had in said cause, to wit:

AUGUST HEMAN, Resp.,)
vs.)
JNO. L. SHUMATE, App.)

Come now the said parties, by attorneys, and after arguments herein submit these causes to the court.

And afterwards, to wit, on the 4th day of June, 1900, the further following proceedings were had in said cause, viz:

AUGUST HEMAN, Respondent.)
vs.) Appeal from Circuit Court, City of St. Louis.
JOHN L. SHUMATE, Appellant.)

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said circuit court of the city of St. Louis rendered, be in all things affirmed and stand in full force and effect, and that the said respondent recover against

the said appellant his costs and charges herein expended, and have therefor execution.

(Opinion filed.)

Which said opinion is in words and figures as follows, to wit:

In the Supreme Court of Missouri, Court in Banc, April Term, 1900.

AUGUST HEMAN, Respondent,
vs.
JOHN L. SHUMATE and HUNTINGTON SMITH, Appellants.

This is a companion case to the case of August Heman *vs.* Nathan D. Allen and Huntington Smith, decided at the present term and reported at page —, Mo. —, and for the same reasons assigned in that case it is affirmed.

All concur.

G. D. BURGESS, *J.*

122 In the Supreme Court of Missouri, Court in Banc, April Term, 1900.

AUGUST HEMAN, Respondent,
vs.
NATHAN D. ALLEN and HUNTINGTON SMITH, Appellants.

In Banc.

This is a suit upon a special-tax bill issued by the president of the board of public improvements against the property of defendants for the sum of forty-nine dollars and four cents for its proportionate part of the cost of constructing a district sewer in Vandeventer Avenue sewer district No. one, in the city of St. Louis.

The answer sets up defences which are equitable in their character, and then, by way of cross-bill, asks for a decree cancelling and annulling the tax bill and lien.

The trial resulted in a judgment for plaintiff for the amount of his claim, and adjudged and decreed it to be a first lien against the property described in the petition.

After unsuccessful motions for a new trial and in arrest, defendants appeal.

Objection is taken to the petition upon the ground that it does not state a cause of action, in that it does not allege that the board of public improvements made the assessment of the entire cost of the construction against the property in the sewer district, but alleges that the president of said board computed the cost thereof and levied and assessed the same as a special tax. Under section 22, art. 6, of the charter of the city of St. Louis, before a lien can attach to property in a taxing district for the cost of the construction of sewers the board of public improvements must make an assessment of the entire cost of construction against the property liable for the
123 cost of construction. The tax bill which was put in evidence shows that the board of public improvements did assess

the costs of the sewers of said district, and, as no objection was taken to the petition by demurrer, the defect was cured by the judgment. Section 2313, Revised Statutes 1899, provides that no judgment after trial shall be reversed, impaired, or in any way affected for omitting any allegation or averment without proving which the triers of the issue ought not to have given such a judgment, and it is clear that the court ought not to have given the judgment that it did give in the absence of proof of the assessment of the entire cost of the sewer by said board. So that this defect in the petition is now unavailable to defendant-. But defendants say that, as the petition does not state a cause of action, the court erred in admitting in evidence over their objection the special-tax bill sued upon.

The record, however, fails to show that an objection was made to the introduction in evidence of this bill. It is true it shows that when plaintiff, who was a witness in his own behalf, was testifying, and was handed the tax bill by his attorney and asked if the signatures of Flad and Campbelle, as president of the board of public improvements and comptroller, respectively, as shown by the tax bill, that defendant- objected upon the ground that the evidence was "incompetent, irrelevant, and immaterial," but these objections did not go to the introduction in evidence of the tax bill itself and cannot now be so considered.

It is argued by defendants that the sewer for the construction of which in part the tax bill sued on was issued is a public sewer, and should be paid for out of the public funds and not by the assessment of the property-owners. That the municipal authorities undertook by ordinance to establish Vandeventer Avenue sewer district number one is not questioned, but the contention is that the facts and circumstances in evidence show that the sewer is a public sewer, and that as the cost for the construction of such sewers can only be paid out of the revenues of the city that the tax bill
124 is void.

Section- 21 and 22 of article VI, scheme and charter, define "public and private sewers." Section 21 provides that "public sewers shall be established and constructed along the principal courses of drainage, at such times, to such extent, of such dimensions and material and under such regulations as may be provided by ordinance, to be approved by the board of public improvements, and there may be constructed such branches to sewers already constructed, or to be constructed, as may be considered expedient by said board."

Section 22 provides that "district sewers shall be established within the limits of districts, to be prescribed by ordinance as approved by the board of public improvements, and so as to connect with a public sewer, or some natural course of drainage. Such district may be subdivided, enlarged or changed, upon the recommendation of said board, by ordinance, at any time previous to the construction of the sewer therein. The assembly shall cause sewers to be constructed in any district wherever a majority of the property-holders resident therein shall petition therefor, or whenever the board

of public improvements shall recommend it as necessary for sanitary or other purposes; and the character, dimensions and material of such sewer shall be prescribed and may be changed, diminished, enlarged or extended, and such sewer shall possess all requisite laterals, inlets and other appurtenances."

These sections provide for the payment of the cost of public sewers by appropriation out of the public revenue and of the cost of district sewers by special tax bills against the property in the sewer district.

It will be observed that by these sections almost unlimited power invested in the municipal authorities in the location and building of public and district sewers, and, as to the latter, there is no restriction as to their size or cost.

125 Yet it is argued by defendants that, because the construction of the sewer was a sanitary measure, it was a public benefit, and therefore a public sewer, and that because the main stem of the sewer is eight feet wide, and connected with lateral sewers of varying length, the main stem is at all events a public sewer and the lateral sewers district sewers. As to the first proposition, it is refuted by the article and section of the charter which authorize the construction of district sewers whenever the board of improvements shall recommend it as necessary for sanitary purposes.

It thus seems clear that at least one of the chief objects in the construction of the sewer in question—that is, for sanitary purposes—was that for which the city was authorized to construct it.

With respect to the contention that because the main stem of the sewer is eight feet wide it is a public sewer, it is only necessary to say that of its dimensions the board of public improvements was under the charter of the city, the sole judges, and their acts in this collateral way not subject to attack.

So with respect to the assertion that part of the sewer in question is a public sewer, because it is the main stem, and that the lateral sewers connecting with it are district sewers. This position seems to us to be alike illogical, for the reason that the charter provides that all district sewers shall be constructed with all requisite "laterals, inlets, and appurtenances," and the connection of lateral sewers with the district sewer could have no tendency towards converting the district sewers into a public sewer.

Nor does the fact that twenty-five acres of land which were not included in the original lines of the sewer district have subsequently been drained into this sewer affect the rights of the parties to this suit.

126 Their drainage connections with the sewer in question have been made since the sewer district was established, the building of the sewer ordered by the board, the work done, and the tax bill sued upon issued for the work, and it is in no way affected thereby.

"The legislature in the exercise of its power of taxation has the power to direct the whole or part of the expense of a public improvement, such as the laying out, grading, or repairing of a street, to be assessed upon the owners of lands benefited thereby; and the

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determination of the territorial district which should be taxed for local improvements is within the province of legislative discretion, and when it determines what lands which might be benefitted by the improvement are in fact benefitted its determination is conclusive upon the owners and the courts." 2 Beach on Public Corporations, sec. 1175, and authorities cited; and, as a general rule, in the absence of fraud in establishing a sewer district or in letting the contract for its construction or unreasonableness of the ordinances providing for the establishing and constructing the sewer, courts will not interfere.

The case of Heman *vs.* Handlan, 59 Mo. App., 492, relied upon by defendants, announces a different rule. That case was a suit upon a special tax bill issued against defendant's property for its proportionate share of the costs of building this same sewer. No instructions were asked or given upon the trial, which resulted in a judgment for the defendant therein. The court said: "When an action at law is tried without error and no instructions are asked or given, the judgment of the trial court will be upheld on appeal, if it can be sustained on any possible theory of law applicable to the facts." The court held that as there was evidence tending to show that the sewer was a public sewer, and that the ordinance by which it was designated a district sewer was oppressive, that the finding and judgment of the court would not be disturbed. This decision in holding that the ordinance under consideration may be declared void merely because it is oppressive is, we think, in conflict
127 with the great weight of authority and supported by none.

The municipal authorities of the city of St. Louis have the same authority under its charter to establish sewer districts and to provide for the construction of sewers therein that they have to open, grade, and otherwise improve its streets, and it was held by this court in the case of Skinker *vs.* Heman, 148 Mo., 349, that "the general rule in this State is that with the exercise of such power the courts will not interfere; but when it appears that an ordinance passed in pursuance of such power is the creature of fraud or is the product of legislative whim or caprice merely and in violation of common right, imposing a burden upon the citizen without any corresponding benefit to him or the community of which he is a constituent, the courts will interfere for his protection."

Morse *vs.* Westport, 136 Mo., 276, was a suit to restrain the defendants, The City of Westport, its engineer and board of public improvements, from letting contracts under ordinances to macadamize certain blocks on McGee street. The proposed street improvements were to cost $5,274, making the special tax amount to more than $2.10 per front foot at any part of the improved street. The local municipal body had by ordinance ordered the improvements. The court held that even conceding the propriety or reasonableness of the exercise of the taxing power by the city open to review by the courts that the ordinance then under review was not an unreasonable exercise of municipal power.

In the case of Johnson *vs.* Duer, 115 Mo., 376, it was held that

where the authority of establishing sewer districts is vested by the legislature in the city council the action of such council is not subject to collateral attack.

So in The City of Kansas *vs.* Richards, 34 Mo. App., 521, it is held "that whether a contemplated improvement within a municipal corporation partaking in nearly equal proportions of a benefit
128 to the public and a special benefit to the property of a local district ought to be made a public charge or be made at the expense of the property specially benefitted is a question for the discretion of the governing power of the municipality, and this discretion, when exercised, is not the subject of review by the courts." To the same effect is Moberly *vs.* Hogan, 131 Mo., 19.

We therefore conclude that the municipal authorities of the city of St. Louis were vested with the exclusive power of establishing Vandeventer sewer district No. one as a district sewer, and that their acts in so doing, in the absence of fraud, is conclusive upon the courts in this action.

It is also contended by defendant- that section 22 of article 6 of the city charter, *supra*, which provides, among other things, that "as soon as a district sewer, with its inlets, manholes and other appurtenances is fully completed, said board (public improvements) shall cause to be computed the whole cost thereof, and shall assess it as a special tax against all the lots of ground in the district respectively, without regard to improvements and in proportion *as* their respective area bear- to the area of the whole district, exclusive of the public highway," and *to* the ordinances authorizing the construction of the Vandeventer Avenue sewer in pursuance thereof are violative of section 1 of the 14th amendment of the Federal Constitution, which provides that "nor shall any State deprive any person of life, liberty, or property without due process of law," and also of the constitution of this State, in that by their terms a betterment tax is assessed against the property of defendants without regard to the question of corresponding benefits and without notice of hearing and opportunity to contest the existence of benefits to their property or fairness of their apportionment between the several owners of the property assessed.

129 In Lockwood *vs.* City of St. Louis, 24 Mo., 20, it was said: "These special assessments are found in the English law, and have prevailed, it is believed, in most, if not all, of our American States, and their validity, when assessed as in this instance, cannot be questioned under our constitution. Their intrinsic justice strikes every one. If an improvement is to be made, the benefit of which is local, it is but just that the property benefitted should bear the burden. While the few ought not to be taxed for the benefit of the whole, the whole ought not to be taxed for the few." The power to levy assessments for local improvements belongs to the legislative, which is the taxing power, but which may be delegated by that branch of the government to municipal corporations, which may, in their discretion, impose the whole or any part of the cost of such improvement against adjoining property, provided always that the assessments for benefits be not in substantial excess of the benefit

received. Garrett *vs.* City of St. Louis, 25 Mo., 505; City of St. Joseph, to use of Gibson, 106 Mo., 437; Morgan *vs.* Hogan, *supra.*

Rutherford *vs.* Hamilton, 97 Mo., 543, was a suit upon a special-tax bill issued by the city engineer of the city of St. Joseph in payment for a lateral sewer constructed for the purpose of drainage of adjacent property, of which the defendant owned a part. The defense interposed was that the act under which the sewer was constructed was unconstitutional "because the cost of the sewer was apportioned by the city engineer against the property fronting on the improvement in proportion to the frontage of each lot without considering the amount of actual benefits conferred by the sewer on each lot-owner; and it was held that the constitutionality of such an act was no longer an open question in this State, and that such an assessment was conclusive on the property-owner as to the amount of benefit which his property derived from the improvement.

130 So in Keith *vs.* Bingham, 100 Mo., 300, it was ruled that the fact that the street did not benefit but damaged the property sought to be charged with the tax bill was no defense to an action on the latter.

The same doctrine is announced in Nevada *vs.* Eddy, 123 Mo., 546.

It is upon the principle that property assessed for local improvements derives an equal or greater benefit from the improvements than the amount assessed against it, of which the board of public improvements are the judges, that special-tax bills for street improvements are sustainable under the taxing power, and where that power has been regularly exercised the propriety of the special tax is not subject of review by the courts.

Where private property is benefitted by public improvement the assessment against it by the proper authorities for its proportionate share of the cost of the improvement not exceeding the benefit which the property derives by reason of such improvement does not in any way increase the burdens of the owner as a tax-payer, and is not the taking of private property without due process of law, but is simply an assessment for benefits. The benefits to the property by reason of the improvements compensates for the assessment.

We are, however, referred to — number of decisions of Federal and State courts which, it is asserted, announce a different rule, among which Norwood *vs.* Baker, 172 U. S., 269, is the leading one. That case arose out of the condemnation of certain lands for the purpose of opening a street in the village of Norwood, a municipal corporation in Ohio.

Ellen R. Baker owned a tract of land in said village through which the village authorities desired to open a street called Ivanhoe avenue, and for that purpose condemned a strip fifty feet wide through her land. They then by ordinance assessed upon

131 her, abutting on each side of said street, an amount covering not simply a sum equal to that paid for the land taken for the street, but in addition the costs and expenses connected with the condemnation proceedings, and the validity of this ordinance was

assailed upon the ground that it was in violation of the fourteenth amendment of the Constitution of the United States.

The constitution of Ohio provides that where private property shall be taken for public use "compensation therefor shall first be made in money, and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owners."

Cities and villages in Ohio are by statute given power to lay off, establish, open, widen, and extend public streets and to condemn land for that purpose.

This statute also provides that where land is appropriated for opening or extending a street the council may assess the cost and expenses of such appropriation or acquisition and of the improvement or of either upon the general tax-list, and in all such cases and also in all cases where an improvement of any kind shall be ordered and is made to an existing street the expense thereof, when not assessed as a general tax to be paid by the municipality generally, "shall be assessed by the council on the abutting and such adjacent and contiguous and other benefitted lots and lands in the corporation, either in proportion to the *benefitted lots and lands in the corporation, either in proportion to the* benefits which may result from the improvement, or according to the value of the property assessed, or by the front foot of the property bounding and abutting upon the improvement, as the council by ordinance setting forth specifically the lots and lands to be assessed may determine before the improvement is made."

In the condemnation proceeding Mrs. Baker was allowed $2,000 for the strip of land taken, irrespective of any benefit to her
132 of the improvement. The village then assessed on her land which abutted on the strip taken the $2,000 paid to her and all the cost attending the condemnation proceedings, which amounted to $218.58.

The court held that the assessment, being by the front foot of the property bounded and abutting upon the improvement, "was under a rule which excluded any inquiry as to special benefits, the necessary operation of which was, to the extent of the excess of the cost of opening the street in question over any special benefit accruing to the abutting property therefrom, to take private property for public use without compensation."

That case has since been followed in Fay *et al. vs.* City of Springfield *et al.*, 94 Fed. Rep., 409; Charles *vs.* Merriam, 98 Fed. Rep., 166; Lyon *vs.* Towandona, 98 Fed. Rep., 361; Lolb *vs.* Trustees, 91 Fed. Rep., 37; Cowley *et al. vs* City of Spokane *et al.*, 99 Fed. Rep., 840; Sears *vs.* Street Comm'rs, 53 N. E. Rep. (Mass.), 876; Hutchison *vs.* Storie, 92 Tex., 685.

But the facts upon which the case was decided are so unlike the facts in the case at bar that we do not think it controlling authority in this. In that case there was assessed upon Mrs. Baker's land, which abutted "on each side of the new street, an amount covering not simply a sum equal to that paid for the land taken for the street, but, in addition, the costs and expenses connected with the condemnation proceedings," the result of which was that the village of Nor-

wood got her fifty-foot strip of land for nothing and charged her $218.58 for the privilege of taking it, while in the case at bar defendant's benefits were $49.04 more than the damage to his property. Moreover, the decision was by a divided court. Besides, if it is to be interpreted as holding that the front-foot or area rule is violative of the fourteenth amendment to the Federal Constitution,
which prohibits any State from depriving any person of his
133 property without due process of law, it is in conflict with the
prior ruling of that court in Spencer *vs.* Merchant, 125 U. S., 345, in which it is said:

"The legislature, in the exercise of its power of taxation, has the right to direct the whole or a part of the expense of a public improvement, such as the laying out, grading, or repairing of a street, to be assessed upon the owners of land benefitted thereby, and the determination of the territorial district which should be taxed for a local improvement is within the province of legislative discretion. Willard *vs.* Presbury, 14 Wall., 676; Davisson *vs.* New Orleans, 96 U. S., 97; Mobile County *vs.* Kimball, 102 U. S., 691, 703, 704; Hagar *vs.* Reclamation District, 111 U. S., 701."

"In the absence of any more specific constitutional restriction than the general prohibition against taking property without due process of law, the legislature of the State, having the power to fix the sum necessary to be levied for the expense of a public improvement, and to order it to be assessed, either like other taxes, upon property generally, or only upon the lands benefitted by the improvement, is authorized to determine both the amount of the whole tax and the class of lands which will receive the benefit and should therefore bear the burden, although it may, if it sees fit, commit the ascertainment of either or both of these facts to the judgment of commissioners.

"When the determination of the lands to be benefitted is entrusted to commissioners, the owners may be entitled to notice and hearing upon the question whether their lands are benefitted and how much. But the legislature has the power to determine, by the statute imposing the tax, what lands which might be benefitted by the improvement are in fact benefitted; and if it does so, its determination is conclusive upon the owners and the courts, and the owners have no right to be heard upon the question whether
their lands are benefitted or not, but only upon the validity
134 of the assessment and its apportionment among the different
parcels of the class which the legislature has conclusively determined to be benefitted."

In Willis *vs.* Eggleston, 170 U. S., 304, it was said: "Nor can it be doubted that, if the State constitution does not prohibit (and our constitution does not), the legislature, speaking generally, may create a new taxing district, determine what territory shall belong to such district and what property shall be considered as *beneficial* by a proposed improvement."

See also Parsons *vs.* District of Columbia, 170 U. S., 45; 2 Dillon's Municipal Corporations, section 752, p. 56. The ruling of that court upon the question now under consideration have been uniform and

in line with a rule well established by the Supreme Court of the United States, and never departed from until the Norwood case. We must therefore decline to recede from a doctrine so well established and which we think supported by reason and authority.

No notice was required to be given to defendant of the passage of the ordinance or the assessment before the issuing of the tax bill and none was necessary.

The judgment should be affirmed, and it is so ordered.

All concur.

G. D. BURGESS, *J.*

135 And afterwards, to wit, on the 13th day of June, 1900, the further following proceedings were had in said cause, viz:

AUGUST HEMAN, Resp.,
v.
JNO. L. SHUMATE ET AL., App.

Come now the said ap-ellants, by attorney, and file their motion for rehearing herein.

Which said motion for rehearing is in words and figures as follows, viz:

In the Supreme Court of Missouri, in Banc.

AUGUST HEMAN, Respondent,
vs. No. 9984.
JOHN L. SHUMATE and HUNTINGTON SMITH, Appellants.

And now comes the appellants and move the court to set aside the opinion, findings, and decree entered in the above-entitled cause, and to grant to appellants a rehearing herein, and for grounds of this motion allege the following:

I.

It was error to hold and rule that appellants could not raise in this court the point that the plaintiff's petition, upon which the cause was tried, did not state facts sufficient to constitute a cause of action.

It was error to hold and to rule that the appellants, to avail themselves of that point, must first raise it by demurrer to plaintiff's petition in the lower court.

Said ruling is in contravention of every previous decision of this court upon that subject, and said ruling should now, for that reason, be set aside and the point considered.

II.

136 It was error for the court to hold and to rule that the special-tax bill sued on was or could be *prima facie* evidence of facts which were necessary to plaintiff's recovery, and yet which plaintiff had not alleged in his petition. The special-tax bill, under the law, could be *prima facie* evidence only of material facts which had been alleged in plaintiff's petition.

III.

It was error in the court to hold and to rule that plaintiff's special-tax bill should have been received in evidence over appellants' objection to support plaintiff's petition, when the same did not state a cause of action.

IV.

Appellants' answer to plaintiff's petition in this cause contains the following specific averment and prayer:

"That the enforcement and collection of said alleged special-tax bill predicated upon said alleged assessment, by the sale of said property, claimed to be subject to the same under sections 21, 22, 24, and 25 of article VI of the charter of the city of St. Louis and the ordinances of the city of St. Louis numbered 13076, 13482, and 14625 and ordinances of said city numbered 13596 and 14630, which ordinances are set out in plaintiff's petition, would be, in fact, the confiscation of said property under the claim of exercising the right of taxation, and would be depriving defendants of their said property without due process of law, and would be taking the said property of defendant for public use without just compensation, contrary to the provisions of the 14th amendment of the Constitution of the United States and contrary to the provisions of section 20 and 21 of article II of the constitution of the State of Missouri; and for that reason said provisions of said charter and said ordinances and said assessment and said tax bill are void, and said provisions of said charter and of said ordinances of said city are repugnant to and in conflict with the said provisions of said consti-
137 tutions for the further reasons that they do not provide for limiting the amount of special taxes for the construction of said sewer to the amount of value or to the benefits received from said construction by defendants' property so taxed; and for the reason that they do not contain any provisions requiring the municipal assembly of said city or any other State or municipal agency to find and determine the extent to which the public of the city of St. Louis would be and were benefitted by the said alleged improvement, and contain no provision requiring the said municipal assembly or any other municipal or State agency to find and determine that the property embraced in the taxing district created by said ordinance or that defendants' said property would be benefitted by said alleged improvement, or to ascertain the extent to which defendants' property would be or was benefitted over and above the benefit derived from the same improvement by the public or by the city of St. Louis; and for the reason that the said provisions of the said charter and ordinance provides for the assessment of the cost of the construction of said sewer and sewers against the owners of the property in said alleged district by apportioning the whole cost of such construction and improvement on the front feet of said property without regard to the unequal depths and without regard to the fact that if the property was benefitted at all over and above the benefit derived by the public some of the said abutting property

would receive greater benefits from the said work than other property in the same district.

These defendants allege that the said special-tax bill No. 8689 is an apparent lien and constitutes a cloud upon defendants' title to defendants' land described in the said petition and in said tax bill.

Thereupon these defendants pray that this court will order, adjudge, and decree that the said assessment of the proportionate part of the cost of construction of the said sewer against the defendants' property, and that the said special-tax bill herein sued
138 on, being number 8689, are null and void and of no effect and constitute no lien upon defendants' said property, and that said special-tax bill be cancelled and delivered up to these defendants."

In support of the foregoing allegation, appellants, by their brief, directed the attention of this court to the following decided cases:

Asberry *vs.* City of Roanoke (1885), 91 Va., 562.
City of Detroit *vs.* Chapin (1897), 112 Mich., 588.
Weed *v.* City of Boston (1898), 42 L. R. A., 642.
Violett's Heirs *vs.* City Council, 23 S. E., 909.
Hammett *vs.* Philadelphia, 65 Pa. St., 146.
State Agents *v.* Newark, 37 N. J. L., 415.
Norwood *v.* Baker, 172 U. S., 269.
Hutcheson *vs.* Storrie (Tex., 1899), 51 S. W., 848.
Fay *v.* Springfield, 94 Fed. Repr., 409.
Charles *v.* City of Marion, 98 Fed. Repr., 166.
Lyon *v.* City of Tonawanda, 98 Fed. Repr., 361.
Cowley *v.* Spokane, 99 Fed., 840.
Walsh *vs.* Barron, 55 N. E., 164; 61 Ohio St., 15.
Dillon Mun. Cor., 4th ed., vol. 22, pp. 932–936.

It was error in this court to hold and rule that the said sections of the charter of the city of St. Louis and the said ordinances of the city of St. Louis and said special-tax bill were not null and void by reason of the fact that all of them were repugnant to and violative of the 5th and 14th amendments of the Constitution of the United States as well as repugnant to and violative of sections 20 and 21 of article II of the constitution of the State of Missouri. It was error in this court to refuse to follow the decision of the Supreme Court of the United States in the case of Norwood *vs.* Baker (172 U. S., 269), and to apply the constitutional principle there laid down and established to the said sections of the charter of the city of St. Louis, and to said ordinance of the said city of St. Louis, and to said special-tax bill.

139 It was error in this court to hold that said sections of said charter and said ordinances and said special-tax bill were valid, notwithstanding the fact that as against the said charter, ordinances, and special-tax bill the appellants by their answer specifically invoked the protection of the 5th and 14th amendment of the Constitution of the United States.

V.

Under the charter of the city of St. Louis city sewers are classified as "public sewers," "district sewers," and "private sewers." The property of appellants could not be taken in whole or in part to pay for the cost of the construction of a public sewer. The Vandeventer Avenue sewer was, as a matter of fact, a public sewer. The board of public improvements and the municipal assembly of the city of St. Louis nevertheless unlawfully declared the said Vandeventer Avenue sewer to be a "district sewer," and unlawfully taxed the cost of the construction of the same against the property of appellants and of others in the taxing district. The taking of appellants' property through and by the means of the said special-tax bill to pay for part of the construction of said public sewer was and is the taking of appellants' property without due process of law and in violation and contravention of the 5th and 14th amendments of the Constitution of the United States, the protection of which appellants pleaded and claimed in their answer filed in the court below.

For that reason this court should have held that all the said provisions of said charter and all of said ordinances upon which said special tax was predicated and the said special-tax bill itself were all null and void.

GROVER & GROVER,
Attorneys for Appellants.

And afterwards, to wit, on the 19th day of June, 1900, the further following proceedings were had in said cause, viz:

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AUGUST HEMAN, Resp.,
v.
JNO. L. SHUMATE ET AL., App.

Now, at this day, the court, having fully considered and understood the motion heretofore filed for rehearing herein, doth order that said motion be, and the same is hereby, overruled.

And afterwards, to wit, on the 28th day of November, 1900, the further following proceedings were had in said cause, viz:

AUGUST HEMAN, Respondent,
vs.
JOHN SHUMATE, Appellant.

Now, at this day, there is presented to the Honorable James B. Gantt, chief justice of the supreme court of the State of Missouri, in chambers, a writ of error to the Supreme Court of the United States, a citation directed to said respondent, citing and admonishing him to appear at a Supreme Court of the United States on the 28th day of December, 1900, an assignment of errors, and a bond in the sum of one thousand dollars; which said writ of error is allowed, said citation signed, said assignment of errors filed, and said bond approved, ordered filed, and made a part of the record herein.

Which said assignment of errors is in words and figures as follows, to wit:

In the Supreme Court of the United States.

JOHN L. SHUMATE, Plaintiff in Error,
vs.
AUGUST HEMAN, Defendant in Error.

Assignment of Errors.

Now comes John L. Shumate, plaintiff in error, and says that in the record, actions, judgments, and judicial proceedings in the cause styled August Heman, plaintiff, against John L. Shumate, defendant, in the circuit court of the city of St. Louis, Missouri, as well as in the records, actions, judgments, judicial proceedings, and
141 opinions of the supreme court of Missouri, in the cause styled August Heman, respondent, against John L. Shumate, appellant, which was and is the same identical cause aforesaid, there is manifest error to the great prejudice and damage of said Shumate in this, to wit:

I.

That the said circuit court of the city of St. Louis erred:

First. In finding and holding that upon the law and evidence in this case the public of the city of St. Louis and the city of St. Louis itself *was* not benefitted by the construction of the said Vandeventer Avenue sewer, it appearing fully and exclusively from the evidence that the said sewer was projected and recommended by the board of public improvements as a sanitary measure necessary for the welfare of the whole people of the city of St. Louis, and that, in conformity with such recommendation of the board of public improvements, the municipal assembly, by the ordinances aforesaid, directed and authorized the construction of said sewer for the purpose for which it was recommended; it appearing further from evidence that 125 acres of the property of the city of St. Louis, or 125 acres of the public property of the city of St. Louis, *was* intended to be and *was* actually drained by the said Vandeventer Avenue sewer, through which all the drainage and sewage from the said 125 acres of public property was carried off and conveyed into the Mill Creek sewer, the latter being a public sewer of the city of St. Louis.

Second. In failing and refusing to find and hold, as prayed in the answer of plaintiff in error and urged in the motion for a new trial, that the provisions of sections 18, 21, 22, 24, and 25 of article VI of *article VI of* the charter of the city of St. Louis and the ordinances 13076, 13482, 14625, and ordinances numbered 13596 and 14630 and the contract with the defendant in error made thereunder and set out in plaintiff's petition and assessment against plaintiff in error or his property for the cost of the construction of said sewer were null, void, and of no effect, for the reason that they are repugnant to and in contravention of the 14th amend-
142 ment of the Constitution of the United States and contrary to the provisions of sections 20 and 21 of article II of the constitution of the State of Missouri.

Third. In not finding and decreeing, as prayed in the answer of plaintiff in error and urged in the motion for a new trial, that upon the facts and law in this case, as the general public of the city of St. Louis and the city of St. Louis derived benefit from the construction and use of said sewer, the city, and the city alone, was liable for the value of the benefit inuring to the city and to the public of the city by the construction and use of said sewer, and that the whole cost of the construction of said sewer should not have been assessed against the property and property-holders in said district, including plaintiff in error and his property.

Fourth. failing and refusing to find and decree, as prayed in the answer of plaintiff in error and urged in the motion for a new trial, that upon the facts and law in this case plaintiff in error and his property could not be made liable for any part of the cost of the construction of said sewer beyond the actual benefit, if any, resulting to his property from the construction of said sewer.

Fifth. In finding and holding, against the contention of plaintiff in error in his answer and in his motion for a new trial, that notwithstanding the failure of the aforesaid provisions of the charter of the city of St. Louis, to wit, sections 18, 21, 22, 24, and 25 of article VI and of the said ordinances of said city, to wit, ordinances No. 13076, 13482, 14625, 13596, and 14630, to provide and require that there should be an ascertainment and determination of the fact whether or not the city and the general public were benefitted by the construction of said sewer, said provisions of said charter and said ordinances were valid and not in contravention of the said provisions of the Constitution of the United States.

Sixth. In declining and refusing to declare and determine, as prayed in the answer of plaintiff in error and urged in his
143 motion for a new trial, that the provisions of said charter and of said ordinances mentioned in the proceeding paragraph and any assessment thereunder compelling the property-owners so assessed, including the plaintiff in error herein, to pay and bear the entire cost of constructing said sewer, when the evidence showed that the city of St. Louis and the general public were actually benefitted by the construction of said sewer, necessarily resulted in depriving the plaintiff in error herein of his property without due process of law and in taking his property for public use without just compensation and in depriving him of the equal protection of the laws, contrary to the provisions of the fourteenth amendment to the Constitution of the United States.

Seventh. In finding and determining against the contention of plaintiff in error in his answer and motion for a new trial that plaintiff in error or his property could be made liable for any part of the cost of said sewer without a legal assessment being made therefor in the manner required by the charter of said city of St. Louis and in the absence of any evidence of the making of such an assessment, which said finding and judgment deprives the plaintiff in error of his property without due process of law, in violation of the fourteenth amendment to the Constitution of the United States.

II.

That the supreme court of Missouri erred:

First. In not reversing the judgment of the circuit court of the city of St. Louis against the plaintiff in error in said cause because of the several errors of said circuit court in its actions, rulings, judgments, and judicial proceedings, the same being the errors hereinbefore specified and set out at length.

Second. In finding and determining, against the contentions of plaintiff in error made in said circuit court and repeated in said supreme court of Missouri, that he or his property could be made liable for any part of the cost of said sewer without a legal assessment being made therefor in the manner required by the charter of
144 said city of St. Louis and in the absence of any evidence that such assessment was made, by which said finding and judgment the property of plaintiff in error was, to the extent of said judgment, taken without due process of law, in contravention of the fourteenth amendment to the Constitution of the United States, the protection of which was duly invoked by plaintiff in error in said circuit court and said supreme court.

Third. In finding, holding, and determining, against the contention of plaintiffs in error, that the opinion and judgment of the Supreme Court of the United States in the similar case of Norwood v. Baker, 172 U. S., 269, were not binding and conclusive upon it, the said supreme court of Missouri, in contravention of the provisions of article VI (2nd paragraph) of the Constitution of the United States.

Fourth. In overruling a motion for the rehearing of said cause, duly and within the time required by law made and presented to said Supreme Court by plaintiff in error, which said motion was based upon the several errors in its actions, rulings, judgments, and judicial proceedings as above set forth, and in the actions, rulings, judgments, and judicial proceedings of the said circuit court of the city of St. Louis more specifically hereinbefore set forth; to which reference is now here made.

Wherefore, for these and divers other reasons and causes apparent on the face of said records, to wit, the record in the cause of August Heman, plaintiff, against John L. Shumate, in the said circuit court of the city of St. Louis, and the record in the same identical cause in the supreme court of Missouri, there styled and designated as August Heman, respondent, against John L. Shumate, appellant, the said John L. Shumate, plaintiff in error herein, now prays that the said actions, rulings, judgments, opinions, and judicial proceedings heretofore has, as aforesaid, in said cause in the circuit court of
the city of St. Louis and the supreme court of Missouri may
145 be reversed, set aside, and for naught held and esteemed, and that judgment here, in this court, the honorable Supreme Court of the United States, may be entered in favor of him, the said John L. Shumate.

HIRA- J. GROVER,
HAMILTON GROVER AND
GEORGE B. WEBSTER,
Attorneys for John L. Shumate, Plaintiff in Error.

Which said bond is in words and figures as follows, to wit:

Know all men by these presents that we, John L. Shumate, as principal, Hiram J. Grover and Huntington Smith, as sureties, are held and firmly bound unto August Heman in the full and just sum of one thousand dollars, to be paid to the said August Heman, his heirs, executors, and administrators; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 22nd day of November, in the year of our Lord one thousand nine hundred.

Whereas lately, at the April term, A. D. 1900, of the supreme court of Missouri, in a suit depending in said court between August Heman, respondent, and John L. Shumate, appellant, judgment was rendered against the said appellant, and the said appellant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said August Heman, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at Washington, D. C., not exceeding thirty days from and after the date of the citation in said cause:

Now, the condition of the above obligation is such that if the said John L. Shumate shall prosecute said writ to effect and answer all costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

JOHN L. SHUMATE. [SEAL.]
146 HIRAM J. GROVER. [SEAL.]
HUNTINGTON SMITH. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Not to act as supersedeas of judgment for the debt proper.

Approved by—

JAS. B. GANTT,
Chief Justice Supreme Court of Missouri.

STATE OF MISSOURI, *set:*

I, Jno. R. Green, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete transcript of the record and proceedings in the case of August Heman *vs.* John L. Shumate as fully and complete as the same appear of record and on file in my said office.

Seal of the Supreme Court of Missouri.

In witness whereof I have hereunto set my hand as clerk and affixed the seal of said court. Done at office, in the city of Jefferson, this 4th day of December, A. D. 1900.

JNO. R. GREEN, *Clerk.*

Endorsed on cover: File No., 18,035. Missouri supreme court. Term No., 550. John L. Shumate, plaintiff in error, *vs.* August Heman. Filed January 28, 1901.